

**Calendar No. 582**

110TH CONGRESS  
2D SESSION

**S. 2663**

To reform the Consumer Product Safety Commission to provide greater protection for children's products, to improve the screening of noncompliant consumer products, to improve the effectiveness of consumer product recall programs, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2008

Mr. PRYOR (for himself, Mr. STEVENS, Mr. INOUE, Ms. COLLINS, Mr. NELSON of Florida, Ms. KLOBUCHAR, Mr. DURBIN, and Mr. SCHUMER) introduced the following bill; which was read the first time

FEBRUARY 26, 2008

Read the second time and placed on the calendar

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**A BILL**

To reform the Consumer Product Safety Commission to provide greater protection for children's products, to improve the screening of noncompliant consumer products, to improve the effectiveness of consumer product recall programs, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “CPSC Reform Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment of Consumer Product Safety Act.
- Sec. 3. Reauthorization.
- Sec. 4. Personnel.
- Sec. 5. Full Commission requirement; interim quorum.
- Sec. 6. Submission of copy of certain documents to congress.
- Sec. 7. Public disclosure of information.
- Sec. 8. Rulemaking.
- Sec. 9. Prohibition on stockpiling under other Commission-enforced statutes.
- Sec. 10. Third party certification of children’s products.
- Sec. 11. Tracking labels for products for children.
- Sec. 12. Substantial product hazard reporting requirement.
- Sec. 13. Corrective action plans.
- Sec. 14. Identification of manufacturer by importers, retailers, and distributors.
- Sec. 15. Prohibited acts.
- Sec. 16. Penalties.
- Sec. 17. Preemption.
- Sec. 18. Sharing of information with Federal, State, local, and foreign government agencies.
- Sec. 19. Financial responsibility.
- Sec. 20. Enforcement by State attorneys general.
- Sec. 21. Whistleblower protections.
- Sec. 22. Ban on children’s products containing lead; lead paint rule.
- Sec. 23. Alternative measures of lead content.
- Sec. 24. Study of preventable injuries and deaths of minority children related to certain consumer products.
- Sec. 25. Cost-benefit analysis under the Poison Prevention Packaging Act of 1970.
- Sec. 26. Inspector general reports.
- Sec. 27. Public internet website links.
- Sec. 28. Child-resistant portable gasoline containers.
- Sec. 29. Toy safety standard.
- Sec. 30. All-terrain vehicle safety standard.
- Sec. 31. Garage door opener standard.
- Sec. 32. Reducing deaths and injuries from carbon monoxide poisoning.
- Sec. 33. Completion of cigarette lighter rulemaking.
- Sec. 34. Consumer product registration forms.
- Sec. 35. Repeal.
- Sec. 36. Consumer Product Safety Commission presence at National Targeting Center of U.S. Customs and Border Protection.
- Sec. 37. Development of risk assessment methodology to identify shipments of consumer products that are likely to contain consumer products in violation of safety standards.

Sec. 38. Seizure and destruction of imported products in violation of consumer product safety standards.

Sec. 39. Database of manufacturing facilities and suppliers involved in violations of consumer product safety standards.

1 **SEC. 2. AMENDMENT OF CONSUMER PRODUCT SAFETY**  
 2 **ACT.**

3 Except as otherwise expressly provided, whenever in  
 4 this Act an amendment or repeal is expressed in terms  
 5 of an amendment to, or repeal of, a section or other provi-  
 6 sion, the reference shall be considered to be made to a  
 7 section or other provision of the Consumer Product Safety  
 8 Act (15 U.S.C. 2051 et seq.).

9 **SEC. 3. REAUTHORIZATION.**

10 (a) IN GENERAL.—Section 32 (15 U.S.C. 2081) is  
 11 amended—

12 (1) by redesignating subsection (c) as sub-  
 13 section (e); and

14 (2) by striking subsections (a) and (b) and in-  
 15 serting the following:

16 “(a) There are authorized to be appropriated to the  
 17 Commission for the purpose of carrying out the provisions  
 18 of this Act and any other provision of law the Commission  
 19 is authorized or directed to carry out—

20 “(1) \$88,500,000 for fiscal year 2009;

21 “(2) \$96,800,000 for fiscal year 2010;

22 “(3) \$106,480,000 for fiscal year 2011;

23 “(4) \$117,128,000 for fiscal year 2012;

1 “(5) \$128,841,000 for fiscal year 2013;

2 “(6) \$141,725,000 for fiscal year 2014; and

3 “(7) \$155,900,000 for fiscal year 2015.

4 “(b) There are authorized to be appropriated to the  
5 Commission for the Office of Inspector General—

6 “(1) \$1,600,000 for fiscal year 2009;

7 “(2) \$1,770,000 for fiscal year 2010;

8 “(3) \$1,936,000 for fiscal year 2011;

9 “(4) \$2,129,600 for fiscal year 2012;

10 “(5) \$2,342,560 for fiscal year 2013;

11 “(6) \$2,576,820 for fiscal year 2014; and

12 “(7) \$2,834,500 for fiscal year 2015.

13 “(c) There are authorized to be appropriated to the  
14 Commission for the purpose of renovation, repair, con-  
15 struction, equipping, and making other necessary capital  
16 improvements to the Commission’s research, development,  
17 and testing facility (including bringing the facility into  
18 compliance with applicable environmental, safety, and ac-  
19 cessibility standards), \$40,000,000 for fiscal years 2009  
20 and 2010.

21 “(d) There are authorized to be appropriated to the  
22 Commission for research, in cooperation with the National  
23 Institute of Science and Technology, the Food and Drug  
24 Administration, and other relevant Federal agencies into  
25 safety issues related to the use of nanotechnology in con-

1 sumer products, \$1,000,000 for fiscal years 2009 and  
2 2010.”.

3 **SEC. 4. PERSONNEL.**

4 (a) PROFESSIONAL STAFF.—

5 (1) IN GENERAL.—The Consumer Product  
6 Safety Commission shall increase the number of  
7 fulltime personnel employed by the Commission to at  
8 least 500 by October 1, 2013, subject to the avail-  
9 ability of appropriations.

10 (2) PORTS OF ENTRY; OVERSEAS INSPEC-  
11 TORS.—The Consumer Product Safety Commission  
12 shall hire at least 50 additional personnel to be as-  
13 signed to duty stations at United States ports of  
14 entry, or to inspect overseas production facilities, by  
15 October 1, 2010, subject to the availability of appro-  
16 priations.

17 (b) PROFESSIONAL CAREER PATH.—The Commis-  
18 sion shall develop and implement a professional career de-  
19 velopment program for professional staff to encourage re-  
20 tention of career personnel and provide professional devel-  
21 opment opportunities for Commission employees.

22 **SEC. 5. FULL COMMISSION REQUIREMENT; INTERIM**  
23 **QUORUM.**

24 (a) NUMBER OF COMMISSIONERS.—

1           (1) IN GENERAL.—The Congress finds that it is  
2           necessary, in order for the Consumer Product Safety  
3           Commission to function effectively and carry out the  
4           purposes for which the Consumer Product Safety  
5           Act was enacted, for the full complement of 5 mem-  
6           bers of the Commission to serve and participate in  
7           the business of the Commission and urges the Presi-  
8           dent to nominate members to fill any vacancy in the  
9           membership of the Commission as expeditiously as  
10          practicable.

11          (2) REPEAL OF LIMITATION.—Title III of Pub-  
12          lic Law 102–389 is amended by striking the first  
13          proviso in the item captioned “CONSUMER PRODUCT  
14          SAFETY COMMISSION, SALARIES AND EXPENSES”  
15          (15 U.S.C. 2053 note).

16          (b) TEMPORARY QUORUM.—Notwithstanding section  
17          4(d) of the Consumer Product Safety Act (15 U.S.C.  
18          2053(d)), 2 members of the Consumer Product Safety  
19          Commission, if they are not affiliated with the same polit-  
20          ical party, shall constitute a quorum for the transaction  
21          of business for the 9-month period beginning on the date  
22          of enactment of this Act.

1   **SEC. 6. SUBMISSION OF COPY OF CERTAIN DOCUMENTS TO**  
2                                   **CONGRESS.**

3           (a) IN GENERAL.—Notwithstanding any rule, regula-  
4   tion, or order to the contrary, the Commission shall com-  
5   ply with the requirements of section 27(k) of the Con-  
6   sumer Product Safety Act (15 U.S.C. 2076(k)) with re-  
7   spect to budget recommendations, legislative recommenda-  
8   tions, testimony, and comments on legislation submitted  
9   by the Commission to the President or the Office of Man-  
10   agement and Budget after the date of enactment of this  
11   Act.

12          (b) REINSTATEMENT OF REQUIREMENT.—Section  
13   3003(d) of Public Law 104–66 (31 U.S.C. 1113 note) is  
14   amended—

15               (1) by striking “or” after the semicolon in  
16   paragraph (31);

17               (2) by redesignating paragraph (32) as (33);  
18   and

19               (3) by inserting after paragraph (31) the fol-  
20   lowing:

21               “(32) section 27(k) of the Consumer Product  
22   Safety Act (15 U.S.C. 2076(k)); or”.

23   **SEC. 7. PUBLIC DISCLOSURE OF INFORMATION.**

24   Section 6 (15 U.S.C. 2055) is amended—

25               (1) by inserting “A manufacturer or private la-  
26   beler shall submit any such mark within 15 calendar

1 days after the date on which it receives the Commis-  
2 sion's offer." after "paragraph (2)." in subsection  
3 (a)(3);

4 (2) by striking "30 days" in subsection (b)(1)  
5 and inserting "15 days";

6 (3) by striking "finds that the public" in sub-  
7 section (b)(1) and inserting "publishes a finding  
8 that the public";

9 (4) by striking "notice and publishes such a  
10 finding in the Federal Register)," in subsection  
11 (b)(1) and inserting "notice),";

12 (5) by striking "10 days" in subsection (b)(2)  
13 and inserting "5 days";

14 (6) by striking "finds that the public" in sub-  
15 section (b)(2) and inserting "publishes a finding  
16 that the public";

17 (7) by striking "notice and publishes such a  
18 finding in the Federal Register." in subsection  
19 (b)(2) and inserting "notice.";

20 (8) in subsection (b)—

21 (A) by striking "(3)" and inserting  
22 "(3)(A)"; and

23 (B) by adding at the end thereof the fol-  
24 lowing:



1       “(B) If the Commission determines that the public  
 2 health and safety requires expedited consideration of an  
 3 action brought under subparagraph (A), the Commission  
 4 may file a request with the District Court for such expe-  
 5 dited consideration. If the Commission files such a re-  
 6 quest, the District Court shall—

7           “(i) assign the matter for hearing at the ear-  
 8 liest possible date;

9           “(ii) give precedence to the matter, to the  
 10 greatest extent practicable, over all other matters  
 11 pending on the docket of the court at the time;

12           “(iii) expedite consideration of the matter to  
 13 the greatest extent practicable; and

14           “(iv) grant or deny the requested injunction  
 15 within 30 days after the date on which the Commis-  
 16 sion’s request was filed with the court.”;

17           (9) by striking “section 19 (related to prohib-  
 18 ited acts);” in subsection (b)(4) and inserting “any  
 19 consumer product safety rule or provision of this Act  
 20 or similar rule or provision of any other Act enforced  
 21 by the Commission;”;

22           (10) by striking “or” after the semicolon in  
 23 subsection (b)(5)(B);

24           (11) by striking “disclosure.” in subsection  
 25 (b)(5)(C) and inserting “disclosure; or”;

1           (12) by inserting in subsection (b)(5) after sub-  
2       paragraph (C) the following:

3           “(D) the Commission publishes a finding that  
4       the public health and safety requires public disclo-  
5       sure with a lesser period of notice than is required  
6       under paragraph (1).”;

7           (13) in the matter following subparagraph (D)  
8       of subsection (b)(5) (as added by paragraph (12) of  
9       this section), by striking “section 19(a),” and insert-  
10      ing “any consumer product safety rule or provision  
11      under this Act or similar rule or provision of any  
12      other Act enforced by the Commission,”; and

13          (14) by adding at the end of subsection (b) the  
14      following:

15      “(9) PUBLICLY AVAILABLE DATABASE OF REPORTED  
16      DEATHS, INJURIES, ILLNESS, AND RISK OF SUCH INCI-  
17      DENTS.—

18          “(A) IN GENERAL.—Not later than 1 year after  
19      the date of enactment of the CPSC Reform Act, the  
20      Commission shall establish and maintain a publicly  
21      available searchable database accessible on the Com-  
22      mission’s web site. The database shall include any  
23      reports of injuries, illness, death, or risk of such in-  
24      jury, illness, or death related to the use of consumer  
25      products received by the Commission from—

1 “(i) consumers;

2 “(ii) local, State, or Federal government  
3 agencies;

4 “(iii) health care professionals, including  
5 physicians, hospitals, and coroners;

6 “(iv) child service providers;

7 “(v) public safety entities, including police  
8 and fire fighters; and

9 “(vi) other non-governmental sources,  
10 other than information provided to the Commis-  
11 sion by retailers, manufacturers, or private la-  
12 belers pursuant to a voluntary or required sub-  
13 mission under section 15 or other mandatory or  
14 voluntary program.

15 “(B) ADDITIONAL CONTENTS.—In addition to  
16 the reports described in subparagraph (A), the Com-  
17 mission may include in the database any additional  
18 information it determines to be in the public inter-  
19 est.

20 “(C) ORGANIZATION OF DATABASE.—The Com-  
21 mission shall categorize the information available on  
22 the database by date, product, manufacturer, the  
23 model of the product, and any other category the  
24 Commission determines to be in the public interest.

1           “(D) TIMING.—The Commission shall make  
2       such reports available on the Commission website no  
3       later than 15 days after the date on which they are  
4       received.

5           “(E) REMOVAL OF INACCURATE OR INCORRECT  
6       INFORMATION.—If the Commission determines, after  
7       investigation, that information made available on the  
8       database is incorrect the Commission shall promptly  
9       remove it from the database.

10          “(F) MANUFACTURER COMMENTS.—A manu-  
11       facturer, private labeler, or retailer shall be given an  
12       opportunity to comment on any information involv-  
13       ing a product manufactured by that manufacturer,  
14       or distributed by that private labeler or retailer, as  
15       the case may be. Any such comments may be in-  
16       cluded in the database alongside the information in-  
17       volving such product if requested by the manufac-  
18       turer, private labeler, or retailer.

19          “(G) DISCLOSURE.—The Commission may not  
20       disclose the names or addresses of consumers pursu-  
21       ant to its authority under this subsection.

22          “(H) APPLICATION WITH OTHER PROVI-  
23       SIONS.—Subsection (a) and the preceding para-  
24       graphs of this subsection do not apply to the public

1 disclosure of information received by the Commis-  
2 sion under subparagraph (A) of this paragraph.”.

3 **SEC. 8. RULEMAKING.**

4 (a) ANPR REQUIREMENT.—

5 (1) IN GENERAL.—Section 9 (15 U.S.C. 2058)  
6 is amended—

7 (A) by striking “shall be commenced” in  
8 subsection (a) and inserting “may be com-  
9 menced”;

10 (B) by striking “in the notice” in sub-  
11 section (b) and inserting “in a notice”;

12 (C) by striking “unless, not less than 60  
13 days after publication of the notice required in  
14 subsection (a), the” in subsection (c) and in-  
15 serting “unless the”;

16 (D) by striking “an advance notice of pro-  
17 posed rulemaking under subsection (a) relating  
18 to the product involved,” in the third sentence  
19 of subsection (c) and inserting “the notice,”;  
20 and

21 (E) by striking “Register.” in the matter  
22 following paragraph (4) of subsection (c) and  
23 inserting “Register. Nothing in this subsection  
24 shall preclude any person from submitting an

1 existing standard or portion of a standard as a  
 2 proposed consumer product safety standard.”.

3 (2) CONFORMING AMENDMENT.—Section  
 4 5(a)(3) (15 U.S.C. 2054(a)(3)) is amended by strik-  
 5 ing “an advance notice of proposed rulemaking or”.

6 (b) RULEMAKING UNDER FEDERAL HAZARDOUS  
 7 SUBSTANCES ACT.—

8 (1) IN GENERAL.—Section 3(a) of the Federal  
 9 Hazardous Substances Act (15 U.S.C. 1262(a)) is  
 10 amended to read as follows:

11 “(a) RULEMAKING.—

12 “(1) IN GENERAL.—Whenever in the judgment  
 13 of the Commission such action will promote the ob-  
 14 jectives of this Act by avoiding or resolving uncer-  
 15 tainty as to its application, the Commission may by  
 16 regulation declare to be a hazardous substance, for  
 17 the purposes of this Act, any substance or mixture  
 18 of substances, which it finds meets the requirements  
 19 of section 2(f)(1)(A).

20 “(2) PROCEDURE.—Proceedings for the issuance,  
 21 amendment, or repeal of regulations under this subsection  
 22 and the admissibility of the record of such proceedings in  
 23 other proceedings, shall be governed by the provisions of  
 24 subsections (f) through (i) of this section.”.

1           (2) PROCEDURE.—Section 2(q)(2) of the Fed-  
2       eral Hazardous Substances Act (15 U.S.C.  
3       1261(q)(2)) is amended by striking “Proceedings for  
4       the issuance, amendment, or repeal of regulations  
5       pursuant to clause (B) of subparagraph (1) of this  
6       paragraph shall be governed by the provisions of sec-  
7       tions 701(e), (f), and (g) of the Federal Food, Drug,  
8       and Cosmetic Act: Provided, That if” and inserting  
9       “Proceedings for the issuance, amendment, or repeal  
10      of regulations pursuant to clause (B) of subpara-  
11      graph (1) of this paragraph shall be governed by the  
12      provisions of subsections (f) through (i) of section 3  
13      of this Act, except that if”.

14           (3) ANPR REQUIREMENT.—Section 3 of the  
15      Federal Hazardous Substances Act (15 U.S.C.  
16      1262) is amended—

17           (A) by striking “shall be commenced” in  
18           subsection (f) and inserting “may be com-  
19           menced”;

20           (B) by striking “in the notice” in sub-  
21           section (g)(1) and inserting “in a notice”; and

22           (C) by striking “unless, not less than 60  
23           days after publication of the notice required in  
24           subsection (f), the” in subsection (h) and in-  
25           serting “unless the”.

(4) OTHER CONFORMING AMENDMENTS.—The Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) is amended—

(A) by striking paragraphs (c) and (d) of section 2 and inserting the following:

“(c) The term ‘Commission’ means the Consumer Product Safety Commission.”;

(B) by striking “Secretary” each place it appears and inserting “Commission” except—

(i) in section 10(b) (15 U.S.C. 1269(b));

(ii) in section 14 (15 U.S.C. 1273);

and

(iii) in section 21(a) (15 U.S.C. 1276(a));

(C) by striking “Department” each place it appears, except in sections 5(c)(6)(D)(i) and 14(b) (15 U.S.C. 1264(c)(6)(D)(i) and 1273(b)) , and inserting “Commission”;

(D) by striking “he” and “his” each place they appear in reference to the Secretary and inserting “it” and “its”, respectively;

(E) by striking “Secretary of Health, Education, and Welfare” each place it appears in



1 section 10(b) (15 U.S.C. 1269(b)) and inserting  
 2 “Commission”;

3 (F) by striking “Secretary of Health, Edu-  
 4 cation, and Welfare” each place it appears in  
 5 section 14 (15 U.S.C. 1273) and inserting  
 6 “Commission”;

7 (G) by striking “Department of Health,  
 8 Education, and Welfare” in section 14(b) (15  
 9 U.S.C. 1273(b)) and inserting “Commission”;

10 (H) by striking “Consumer Product Safety  
 11 Commission” each place it appears and insert-  
 12 ing “Commission”;

13 (I) by striking “(hereinafter in this section  
 14 referred to as the ‘Commission’)” in section  
 15 14(d) (15 U.S.C. 1273(d)) and section 20(a)(1)  
 16 (15 U.S.C. 1275(a)(1)); and

17 (J) by striking paragraph (5) of section  
 18 18(b) (15 U.S.C. 1261 note).

19 (c) RULEMAKING UNDER FLAMMABLE FABRICS  
 20 ACT.—

21 (1) IN GENERAL.—Section 4 of the Flammable  
 22 Fabrics Act (15 U.S.C. 1193) is amended—

23 (A) by striking “shall be commenced” in  
 24 subsection (g) and inserting “may be com-

menced by a notice of proposed rulemaking or”;  
and

(B) by striking “unless, not less than 60  
days after publication of the notice required in  
subsection (g), the” in subsection (i) and insert-  
ing “unless the”.

(2) OTHER CONFORMING AMENDMENTS.—The  
Flammable Fabrics Act (15 U.S.C. 1193) is amend-  
ed—

(A) by striking paragraph (i) of section 2  
(15 U.S.C. 1191(i)) and inserting the following:

“(i) The term ‘Commission’ means the Con-  
sumer Product Safety Commission.”;

(B) by striking “Secretary of Commerce”  
each place it appears and inserting “Commis-  
sion”;

(C) by striking “Secretary” each place it  
appears and inserting “Commission”, except in  
sections 9 and 14 (15 U.S.C. 1198 and 1201);

(D) by striking “he” and “his” each place  
they appear in reference to the Secretary and  
inserting “it” and “its”, respectively;

(E) by striking paragraph (5) of section  
4(e) (15 U.S.C. 1193(e)) and redesignating  
paragraph (6) as paragraph (5);

1 (F) by striking “Consumer Product Safety  
 2 Commission (hereinafter in this section referred  
 3 to as the ‘Commission’)” in section 15 (15  
 4 U.S.C. 1202) and inserting “Commission”;

5 (G) by striking section 16(d) (15 U.S.C.  
 6 1203(d)) and inserting the following:

7 “(d) In this section, a reference to a flammability  
 8 standard or other regulation for a fabric, related material,  
 9 or product in effect under this Act includes a standard  
 10 of flammability continued in effect by section 11 of the  
 11 Act of December 14, 1967 (Public Law 90–189).”; and

12 (H) by striking “Consumer Product Safety  
 13 Commission” in section 17 (15 U.S.C. 1204)  
 14 and inserting “Commission”.

15 **SEC. 9. PROHIBITION ON STOCKPILING UNDER OTHER**  
 16 **COMMISSION-ENFORCED STATUTES.**

17 Section 9(g)(2) (15 U.S.C. 2058(g)(2)) is amended—

18 (1) by inserting “or to which a rule under any  
 19 other law enforced by the Commission applies,” after  
 20 “applies,”; and

21 (2) by striking “consumer product safety” the  
 22 second, third, and fourth places it appears.

1 **SEC. 10. THIRD PARTY CERTIFICATION OF CHILDREN'S**  
2 **PRODUCTS.**

3 (a) IN GENERAL.—Section 14(a) (15 U.S.C.  
4 2063(a)) is amended—

5 (1) by redesignating paragraph (2) as para-  
6 graph (5);

7 (2) by striking “Every manufacturer” in para-  
8 graph (1) and inserting “Except as provided in  
9 paragraph (2), every manufacturer”;

10 (3) by designating the second and third sen-  
11 tences of subsection (a) as paragraphs (3) and (4),  
12 respectively;

13 (4) by inserting after paragraph (1) the fol-  
14 lowing:

15 “(2) Beginning 60 days after the date on which the  
16 Commission publishes notice of an interim procedure des-  
17 ignated under subsection (d)(2) of this section, every man-  
18 ufacturer, or its designee, of a children’s product (and the  
19 private labeler, or its designee, of such product if it bears  
20 a private label) manufactured or imported after such 60th  
21 day that is subject to a children’s product safety standard  
22 shall—

23 “(A) have the product tested by a third party  
24 laboratory qualified to perform such tests or testing  
25 programs; and

26 “(B) issue a certification which shall—

1 “(i) certify that such product meets that  
2 standard; and

3 “(ii) specify the applicable children’s prod-  
4 uct safety standard.”;

5 (5) by striking “Such certificate shall” in para-  
6 graph (3) as redesignated by paragraph (1) and in-  
7 serting “A certificate required under this subsection  
8 shall”; and

9 (6) in paragraph (5), as redesignated by para-  
10 graph (1)—

11 (A) by striking “required by paragraph (1)  
12 of this subsection,” and inserting “required by  
13 paragraph (1) or (2) (as the case may be),”;  
14 and

15 (B) by striking “requirement under para-  
16 graph (1)” and inserting “requirement under  
17 paragraph (1) or (2) (as the case may be)”.

18 (b) TESTING PROGRAMS.—Section 14(b) (15 U.S.C.  
19 2063(b)) is amended—

20 (1) by inserting “(1)” before the first sentence;

21 (2) by designating the second sentence as para-  
22 graph (2); and

23 (3) in paragraph (2), as so designated, by strik-  
24 ing “Any test or” and inserting “Except as provided  
25 in subsection (a)(2), any test or”.

1       (c) CHILDREN’S PRODUCTS; TESTING BY INDE-  
 2 PENDENT THIRD LABORATORIES; CERTIFICATION.—Sec-  
 3 tion 14 (15 U.S.C. 2063) is amended by adding at the  
 4 end the following:

5       “(d) APPLICATION TO OTHER CONSUMER PROD-  
 6 UCTS; CERTIFIER STANDARDS; AUDIT.—

7               “(1) IN GENERAL.—The Commission—

8                       “(A) within 1 year after the date of enact-  
 9 ment of the CPSC Reform Act shall by rule—

10                               “(i) establish protocols and stand-  
 11 ards—

12                                       “(I) for acceptance of certifi-  
 13 cation or continuing guarantees of  
 14 compliance by manufacturers under  
 15 this section; and

16                                       “(II) for verifying that products  
 17 tested by third party laboratories com-  
 18 ply with applicable standards under  
 19 this Act and other Acts enforced by  
 20 the Commission;

21                                       “(ii) prescribe standards for accredita-  
 22 tion of third party laboratories, either by  
 23 the Commission or by 1 or more inde-  
 24 pendent standard-setting organizations to  
 25 which the Commission delegates authority,

1 to engage in certifying compliance under  
2 subsection (a)(2) for children’s products or  
3 products to which the Commission extends  
4 the certification requirements of that sub-  
5 section;

6 “(iii) establish requirements, or dele-  
7 gate authority to 1 or more independent  
8 standard-setting organizations, for third  
9 party laboratory testing, as the Commis-  
10 sion determines to be necessary to ensure  
11 compliance with any applicable rule or  
12 order, of random samples of products cer-  
13 tified under this section to determine  
14 whether they meet the requirements for  
15 certification;

16 “(iv) establish requirements for peri-  
17 odic audits of third party laboratories by  
18 an independent standard-setting organiza-  
19 tion as a condition for accreditation of  
20 such laboratories under this section; and

21 “(v) establish a program by which  
22 manufacturers may label products as com-  
23 pliant with the certification requirements  
24 of subsection (a)(2); and

1           “(B) may by rule extend the certification  
 2 requirements of subsection (a)(2) to other con-  
 3 sumer products or to classes or categories of  
 4 consumer products.

5           “(2) INTERIM PROCEDURE.—Within 30 days  
 6 after the date of enactment of the CPSC Reform  
 7 Act, the Commission shall—

8           “(A) consider existing laboratory testing  
 9 certification procedures established by inde-  
 10 pendent standard-setting organizations; and

11           “(B) designate an existing procedure, or  
 12 existing procedures, for manufacturers of chil-  
 13 dren’s products to follow until the Commission  
 14 issues a final rule under paragraph (1)(A).

15           “(e) DEFINITIONS.—In this section:

16           “(1) CHILDREN’S PRODUCT.—The term ‘chil-  
 17 dren’s product’ means a product (other than a medi-  
 18 cation, drug, or food) designed or intended for use  
 19 by, or care of, a child 7 years of age or younger that  
 20 is introduced into the interstate stream of com-  
 21 merce. In determining whether a product is intended  
 22 for use by a child 7 years of age or younger, the fol-  
 23 lowing factors shall be considered:

24           “(A) A statement by a manufacturer about  
 25 the intended use of such product, including a



1 label on such product, if such statement is rea-  
 2 sonable.

3 “(B) Whether the product is represented  
 4 in its packaging, display, promotion, or adver-  
 5 tising as appropriate for children 7 years of age  
 6 or younger.

7 “(C) Whether the product is commonly  
 8 recognized by consumers as being intended for  
 9 use by a child 7 years of age or younger.

10 “(D) The Age Determination Guidelines  
 11 issued by the Commission in September 2002  
 12 and any subsequent version of such Guideline.

13 “(2) CHILDREN’S PRODUCT SAFETY STAND-  
 14 ARD.—The term ‘children’s product safety standard’  
 15 means a consumer product safety rule or standard  
 16 under this Act or any other Act enforced by the  
 17 Commission, or a rule or classification under this  
 18 Act or any other Act enforced by the Commission  
 19 declaring a consumer product to be a banned haz-  
 20 ardous product or substance.

21 “(3) THIRD PARTY LABORATORY.—

22 “(A) IN GENERAL.—The term ‘third party  
 23 laboratory’ means a testing entity that—

24 “(i) is designated by the Commission,  
 25 or by an independent standard-setting or-

1           ganization to which the Commission quali-  
2           fies as capable of making such a designa-  
3           tion, as a testing laboratory that is com-  
4           petent to test products for compliance with  
5           applicable safety standards under this Act  
6           and other Acts enforced by the Commis-  
7           sion; and

8           “(ii) except as provided in subpara-  
9           graph (C), is a non-governmental entity  
10          that is not owned, managed, or controlled  
11          by the manufacturer or private labeler.

12          “(B) TESTING AND CERTIFICATION OF  
13          ART MATERIALS AND PRODUCTS.—A certifying  
14          organization (as defined in appendix A to sec-  
15          tion 1500.14(b)(8) of title 16, Code of Federal  
16          Regulations) meets the requirements of sub-  
17          paragraph (A)(ii) with respect to the certifi-  
18          cation of art material and art products required  
19          under this section or by regulations issued  
20          under the Federal Hazardous Substances Act.

21          “(C) FIREWALLED PROPRIETARY LABORA-  
22          TORIES.—Upon request, the Commission may  
23          certify a laboratory that is owned, managed, or  
24          controlled by the manufacturer or private label-

1           er as a third party laboratory if the Commis-  
2           sion—

3                   “(i) finds that certification of the lab-  
4                   oratory would provide equal or greater con-  
5                   sumer safety protection than the manufac-  
6                   turer’s use of an independent third party  
7                   laboratory;

8                   “(ii) establishes procedures to ensure  
9                   that the laboratory is protected from  
10                  undue influence, including pressure to  
11                  modify or hide test results, by the manu-  
12                  facturer or private labeler; and

13                  “(iii) establishes procedures for con-  
14                  fidential reporting of allegations of undue  
15                  influence to the Commission.

16               “(D) PROVISIONAL CERTIFICATION.—

17                   “(i) IN GENERAL.—Upon application  
18                   made to the Commission less than 1 year  
19                   after the date of enactment of the CPSC  
20                   Reform Act, the Commission may provide  
21                   provisional certification of a laboratory de-  
22                   scribed in subparagraph (C) of this para-  
23                   graph, or a laboratory described in sub-  
24                   paragraph (A) of this paragraph, upon a  
25                   showing that the laboratory—

1                   “(I) is certified under laboratory  
2                   testing certification procedures estab-  
3                   lished by an independent standard-  
4                   setting organization; or

5                   “(II) provides consumer safety  
6                   protection that is equal to or greater  
7                   than that which would be provided by  
8                   use of an independent third party lab-  
9                   oratory.

10                  “(ii) DEADLINE.—The Commission  
11                  shall grant or deny any such application  
12                  within 45 days after receiving the com-  
13                  pleted application.

14                  “(iii) EXPIRATION.—Any such certifi-  
15                  cation shall expire 90 days after the date  
16                  on which the Commission publishes final  
17                  rules under subsections (a)(2) and (d).

18                  “(iv) ANTI-GAP PROVISION.—Within  
19                  45 days after receiving a complete applica-  
20                  tion for certification under the final rule  
21                  prescribed under subsections (a)(2) and  
22                  (d) of this section from a laboratory provi-  
23                  sionally certified under this subparagraph,  
24                  the Commission shall grant or deny the ap-  
25                  plication if the application is received by

1           the Commission no later than 45 days  
2           after the date on which the Commission  
3           publishes such final rule.

4           “(E) DECERTIFICATION.—The Commis-  
5           sion, or an independent standard-setting organi-  
6           zation to which the Commission has delegated  
7           such authority, may decertify a third party lab-  
8           oratory (including a laboratory certified as a  
9           third party laboratory under subparagraph (B)  
10          of this paragraph) if it finds, after notice and  
11          investigation, that a manufacturer or private la-  
12          beler has exerted undue influence on the labora-  
13          tory.”.

14          (d) CONFORMING AMENDMENTS.—Section 14(b) (15  
15   U.S.C. 2063(b)) is amended—

16           (1) by striking “consumer products which are  
17          subject to consumer product safety standards” and  
18          inserting “a consumer product that is subject to a  
19          consumer product safety standard, a children’s prod-  
20          uct that is subject to a children’s product safety  
21          standard, or either such product that is subject to  
22          any other rule under this Act (or a similar rule  
23          under any other Act enforced by the Commission)”;  
24          and

1           (2) by striking “, at the option of the person re-  
 2           quired to certify the product,” and inserting “be re-  
 3           quired by the Commission to”.

4           (e) LABEL AND CERTIFICATION.—Not later than 1  
 5           year after the date of enactment of this Act, the Consumer  
 6           Product Safety Commission shall prescribe a rule in ac-  
 7           cordance with section 14(a)(5) and (d) of the Consumer  
 8           Product Safety Act (15 U.S.C. 2063(a)(5) and (d)) for  
 9           children’s products (as defined in subsection (e) of such  
 10          section).

11          (f) PROHIBITION ON IMPORTS OF CHILDREN’S PROD-  
 12          UCTS WITHOUT THIRD PARTY TESTING CERTIFI-  
 13          CATION.—Section 17(a) (15 U.S.C. 2066(a)) is amend-  
 14          ed—

15               (1) by striking “or” at the end of paragraph  
 16               (4);

17               (2) by striking “(g).” in paragraph (5) and in-  
 18               serting a “(g); or”; and

19               (3) by adding at the end the following:

20               “(6) is a children’s product, as that term is de-  
 21               fined in section 14(e), or a product for which the  
 22               Commission, under section 14(d)(1), has required  
 23               certification under section 14(a)(2), that is not ac-  
 24               companied by a certificate from a third party as re-  
 25               quired by section 14(a)(2).”.

1       (g) CPSC CONSIDERATION OF EXISTING REQUIRE-  
 2 MENTS.—In establishing standards for laboratories cer-  
 3 tified to perform testing under section 14 of the Consumer  
 4 Product Safety Act, as amended by this section, the Con-  
 5 sumer Product Safety Commission may consider stand-  
 6 ards and protocols for certification of such laboratories by  
 7 independent standard-setting organizations that are in ef-  
 8 fect on the date of enactment of this Act, but shall ensure  
 9 that the final rule prescribed under subsections (a)(2) and  
 10 (d) of that section incorporates, as the standard for certifi-  
 11 cation, the most current scientific and technological stand-  
 12 ards and techniques available.

13 **SEC. 11. TRACKING LABELS FOR PRODUCTS FOR CHIL-**  
 14 **DREN.**

15       (a) LABELING REQUIREMENT FOR INTERNET AND  
 16 CATALOGUE ADVERTISING OF CERTAIN TOYS AND  
 17 GAMES.—Section 24 of the Federal Hazardous Sub-  
 18 stances Act (15 U.S.C. 1278) is amended—

19               (1) by redesignating subsections (c) and (d) as  
 20 subsections (d) and (e), respectively; and

21               (2) by inserting after subsection (b) the fol-  
 22 lowing:

23       “(c) INTERNET, CATALOGUE, AND OTHER ADVER-  
 24 TISING.—

25               “(1) REQUIREMENT.—

1           “(A) CAUTIONARY STATEMENT.—Any ad-  
2           vertisement posted by a manufacturer, retailer,  
3           distributor, private labeler, or licensor for any  
4           toy, game, balloon, small ball, or marble that  
5           requires a cautionary statement under sub-  
6           sections (a) and (b), including any advertise-  
7           ment on Internet websites or in catalogues or  
8           other distributed materials, shall include the ap-  
9           propriate cautionary statement required under  
10          such subsections in its entirety displayed on or  
11          immediately adjacent to such advertisement. A  
12          manufacturer, distributor, private labeler, or li-  
13          censor that uses a retailer to advertise a prod-  
14          uct shall inform the retailer of any cautionary  
15          statement that may apply to such products in  
16          any communication to the retailer that contains  
17          information about the products to be adver-  
18          tised. The requirement imposed by the pre-  
19          ceding sentence shall only apply to advertise-  
20          ments by the retailer if the manufacturer, im-  
21          porter, distributor, private labeler, or licensor  
22          affirmatively informs the retailer that such cau-  
23          tionary statement is required for the product.



1 “(B) DISPLAY.—The cautionary statement  
2 described in subparagraph (A) shall be promi-  
3 nently displayed—

4 “(i) in the primary language used in  
5 the advertisement, catalogue, or Internet  
6 website;

7 “(ii) in conspicuous and legible type  
8 in contrast by typography, layout, or color  
9 with other material printed or displayed in  
10 such advertisement; and

11 “(iii) in a manner consistent with part  
12 1500 of title 16, Code of Federal Regula-  
13 tions.

14 “(C) DEFINITIONS.—In this paragraph,  
15 the terms ‘manufacturer, retailer, distributor,  
16 private labeler, and licensor’—

17 “(i) mean any individual who, by such  
18 individual’s occupation holds himself or  
19 herself out as having knowledge or skill pe-  
20 culiar to consumer products, including any  
21 person who is in the business of manufac-  
22 turing, selling, distributing, labeling, li-  
23 censing, or otherwise placing in the stream  
24 of commerce consumer products; but

1                   “(ii) do not include an individual  
2                   whose selling activity is intermittent and  
3                   does not constitute a trade or business.

4                   “(2) ENFORCEMENT.—The requirement under  
5                   paragraph (1) shall be treated as a consumer prod-  
6                   uct safety standard promulgated under section 7 of  
7                   the Consumer Product Safety Act (15 U.S.C. 2056).  
8                   The publication or distribution of any advertisement  
9                   that is not in compliance with paragraph (1) shall  
10                  be treated as a prohibited act under section 19 of  
11                  such Act (15 U.S.C. 2068).”.

12                  (b) TRACKING LABELS FOR PRODUCTS FOR CHIL-  
13                  DREN.—Section 14(a) of the Consumer Product Safety  
14                  Act (15 U.S.C. 2063(a)), as amended by section 10(a) of  
15                  this Act, is further amended by adding at the end thereof  
16                  the following:

17                  “(6) Effective 1 year after the date of enact-  
18                  ment of the CPSC Reform Act, the manufacturer of  
19                  a children’s product or other consumer product (as  
20                  may be required by the Commission in its discretion  
21                  after a rulemaking proceeding) shall place distin-  
22                  guishing marks on the product and its packaging, to  
23                  the extent practicable, that will enable the ultimate  
24                  purchaser to ascertain the manufacturer, production  
25                  time period, and cohort (including the batch, run

7 (1) by striking “(c) The” and inserting “(c)(1)  
8 The”;

10 (3) by redesignating paragraphs (1), (2), and

(4) by indenting the sentence beginning “Such  
labels” and inserting “(2)” before “Such labels”;

15 (5) by adding at the end thereof the following:

20 SEC. 12. SUBSTANTIAL PRODUCT HAZARD REPORTING RE-  
21 QUIREMENT.

(1) by striking “consumer product distributed  
in commerce,” and inserting “consumer product (or  
other product or substance over which the Commis-

1 sion has jurisdiction under this or any other Act)  
 2 distributed in commerce,”;

3 (2) by redesignating paragraphs (2) and (3) as  
 4 paragraphs (3) and (4), respectively; and

5 (3) by inserting after paragraph (1) the fol-  
 6 lowing:

7 “(2) fails to comply with any rule or standard  
 8 promulgated by the Commission under this or any  
 9 other Act;”.

10 **SEC. 13. CORRECTIVE ACTION PLANS.**

11 Section 15(d) (15 U.S.C. 2064(d)) is amended—

12 (1) by inserting “(1)” after “(d)”;

13 (2) by redesignating paragraphs (1), (2), and  
 14 (3) as subparagraphs (A), (B), and (C);

15 (3) by striking “more (A)” in subparagraph  
 16 (C), as redesignated, and inserting “more (i)”;

17 (4) by striking “or (B)” in subparagraph (C),  
 18 as redesignated, and inserting “or (ii)”;

19 (5) by striking “whichever of the following ac-  
 20 tions the person to whom the order is directed  
 21 elects:” and inserting “any one or more of the fol-  
 22 lowing actions it determines to be in the public in-  
 23 terest:”;

24 (6) by indenting the sentence beginning “An  
 25 order” and inserting “(2)” before “An order”;

1           (7) by striking “satisfactory to the Commis-  
2           sion,” and inserting “for approval by the Commis-  
3           sion,”;

4           (8) by striking “described in paragraph (3).”  
5           and inserting “described in paragraph (1)(C).”; and

6           (9) by adding at the end the following:

7           “(3)(A) If the Commission approves an action plan,  
8           it shall indicate its approval in writing.

9           “(B) If the Commission finds that an approved action  
10          plan is not effective, or that the manufacturer, retailer,  
11          or distributor is not executing an approved action plan ef-  
12          fectively, the Commission may by order amend, or require  
13          amendment of, the action plan.

14          “(C) If the Commission determines, after notice and  
15          opportunity for comment, that a manufacturer, retailer,  
16          or distributor has failed to comply substantially with its  
17          obligations under its action plan, the Commission may re-  
18          voke its approval of the action plan. The manufacturer,  
19          retailer, or distributor to which the action plan applies  
20          may not distribute the product to which the action plan  
21          relates in commerce after receipt of notice of a revocation  
22          of the action plan.”.

1 **SEC. 14. IDENTIFICATION OF MANUFACTURER BY IMPORT-**  
2 **ERS, RETAILERS, AND DISTRIBUTORS.**

3 Section 16 (15 U.S.C. 2065) is amended by adding  
4 at the end thereof the following:

5 “(c) Upon request by an officer or employee duly des-  
6 ignated by the Commission—

7 “(1) every importer, retailer, or distributor of a  
8 consumer product (or other product or substance  
9 over which the Commission has jurisdiction under  
10 this or any other Act) shall identify the manufac-  
11 turer of that product by name, address, or such  
12 other identifying information as the officer or em-  
13 ployee may request to the extent that the informa-  
14 tion is known, or can be determined, by the im-  
15 porter, retailer, or distributor; and

16 “(2) every manufacturer shall identify by name,  
17 address, or such other identifying information as the  
18 officer or employee may request—

19 “(A) each retailer or distributor to which  
20 it directly supplied a given consumer product  
21 (or other product or substance over which the  
22 Commission has jurisdiction under this or any  
23 other Act);

24 “(B) each subcontractor involved in the  
25 production or fabrication of such product or  
26 substance; and

1                   “(C) each subcontractor from which it ob-  
 2                   tained a component thereof.”.

3 **SEC. 15. PROHIBITED ACTS.**

4           (a) SALE OF RECALLED PRODUCTS.—Section 19(a)  
 5 (15 U.S.C. 2068(a)) is amended—

6                   (1) by striking paragraph (1) and inserting the  
 7                   following:

8                   “(1) sell, offer for sale, manufacture for sale,  
 9                   distribute in commerce, or import into the United  
 10                  States any consumer product, or other product or  
 11                  substance that is regulated under this Act or any  
 12                  other Act enforced by the Commission, that is—

13                   “(A) not in conformity with an applicable  
 14                   consumer product safety standard under this  
 15                   Act, or any similar rule under any such other  
 16                   Act;

17                   “(B) subject to voluntary corrective action  
 18                   taken by the manufacturer, in consultation with  
 19                   the Commission, of which action the Commis-  
 20                   sion has notified the public, but only if the sell-  
 21                   er, distributor, or manufacturer knew or should  
 22                   have known of such voluntary corrective action;  
 23                   or

24                   “(C) subject to an order issued under sec-  
 25                   tion 12 or 15 of this Act, designated a banned

1           hazardous substance under the Federal Haz-  
 2           ardous Substances Act (15 U.S.C. 1261 et  
 3           seq.);”;

4           (2) by striking “or” after the semicolon in  
 5           paragraph (7);

6           (3) by striking “and” after the semicolon in  
 7           paragraph (8);

8           (4) by striking “insulation).” in paragraph (9)  
 9           and inserting “insulation);”; and

10          (5) by striking “18(b).” in paragraph (10) and  
 11          inserting “18(b); or”.

12          (b) EXPORT OF RECALLED PRODUCTS.—

13           (1) IN GENERAL.—Section 18 (15 U.S.C. 2067)  
 14          is amended by adding at the end thereof the fol-  
 15          lowing:

16          “(c) Notwithstanding any other provision of law, the  
 17          Commission may prohibit a person from exporting from  
 18          the United States for purpose of sale any consumer prod-  
 19          uct, or other product or substance that is regulated under  
 20          this Act of any other Act enforced by the Commission,  
 21          that the Commission determines, after notice to the manu-  
 22          facturer—

23           “(1) is not in conformity with an applicable  
 24          consumer product safety standard under this Act or  
 25          with a similar rule under any such other Act and



1 does not violate applicable safety standards estab-  
 2 lished by the importing country;

3 “(2) is subject to an order issued under section  
 4 12 or 15 of this Act or designated as a banned haz-  
 5 ardous substance under the Federal Hazardous Sub-  
 6 stances Act (15 U.S.C. 1261 et seq.); or

7 “(3) is subject to voluntary corrective action  
 8 taken by the manufacturer, in consultation with the  
 9 Commission, of which action the Commission has  
 10 notified the public and that would have been subject  
 11 to mandatory corrective action under this Act or any  
 12 other Act enforced by the Commission if voluntary  
 13 corrective action had not been taken by the manu-  
 14 facturer, except that the Commission may permit  
 15 such a product to be exported if it meets applicable  
 16 safety standards established by the importing coun-  
 17 try.”.

18 (2) PENALTY.—Section 19(a) (15 U.S.C.  
 19 2068(a)), as amended by subsection (a) of this sec-  
 20 tion, is further amended—

21 (A) by striking “or” after the semicolon in  
 22 paragraph (10);

23 (B) by striking “37.” in paragraph (11)  
 24 and inserting “37; or”; and

1 (C) by adding at the end thereof the fol-  
2 lowing:

3 “(12) violate an order of the Commission under  
4 section 18(c).”.

5 (3) CONFORMING AMENDMENTS TO OTHER  
6 ACTS.—

7 (A) FEDERAL HAZARDOUS SUBSTANCES  
8 ACT.—Section 5(b)(3) of the Federal Haz-  
9 ardous Substances Act (15 U.S.C. 1264(b)(3))  
10 is amended by striking “substance presents an  
11 unreasonable risk of injury to persons residing  
12 in the United States,” and inserting “substance  
13 is prohibited under section 18(c) of the Con-  
14 sumer Product Safety Act,”.

15 (B) FLAMMABLE FABRICS ACT.—Section  
16 15 of the Flammable Fabrics Act (15 U.S.C.  
17 1202) is amended by adding at the end thereof  
18 the following:

19 “(d)(1) Notwithstanding any other provision of law,  
20 except as provided in paragraph (2), the Consumer Prod-  
21 uct Safety Commission may prohibit a person from export-  
22 ing from the United States for purpose of sale any fabric,  
23 related material, or product that the Commission deter-  
24 mines, after notice to the manufacturer—

1           “(A) is not in conformity with an applicable  
2           consumer product safety standard under the Con-  
3           sumer Product Safety Act or with a rule under this  
4           Act;

5           “(B) is subject to an order issued under section  
6           12 or 15 of the Consumer Product Safety Act or  
7           designated as a banned hazardous substance under  
8           the Federal Hazardous Substances Act (15 U.S.C.  
9           1261 et seq.); or

10          “(C) is subject to voluntary corrective action  
11          taken by the manufacturer, in consultation with the  
12          Commission, of which action the Commission has  
13          notified the public and that would have been subject  
14          to mandatory corrective action under this or another  
15          Act enforced by the Commission if voluntary correc-  
16          tive action had not been taken by the manufacturer.

17          “(2) The Commission may permit the exportation  
18          of a fabric, related material, or product described in para-  
19          graph (1) if it meets applicable safety standards of the  
20          country to which it is being exported.”.

21          (c) FALSE CERTIFICATION OF COMPLIANCE WITH  
22          TESTING LABORATORY STANDARD.—Section 19(a) (15  
23          U.S.C. 2068(a)), as amended by subsection (b)(2) of this  
24          section, is further amended—

1           (1) by striking “or” after the semicolon in  
2 paragraph (11);

3           (2) by striking “18(c).” in paragraph (12) and  
4 inserting “18(c); or”; and

5           (3) by adding at the end thereof the following:

6           “(13) sell, offer for sale, distribute in com-  
7 merce, or import into the United States any con-  
8 sumer product bearing a registered safety certifi-  
9 cation mark owned by an accredited conformity as-  
10 sessment body, which mark is known, or should have  
11 been known, by such person to be used in a manner  
12 unauthorized by the owner of that certification  
13 mark.”.

14       (d) MISREPRESENTATION OF INFORMATION IN IN-  
15 VESTIGATION.—Section 19(a) (15 U.S.C. 2068(a)), as  
16 amended by subsection (c) of this section, is further  
17 amended—

18           (1) by striking “or” after the semicolon in  
19 paragraph (12);

20           (2) by striking “false.” in paragraph (13) and  
21 inserting “false; or”; and

22           (3) by adding at the end thereof the following:

23           “(14) misrepresent to any officer or employee  
24 of the Commission the scope of consumer products  
25 subject to an action required under section 12 or 15,

1 or to make a material misrepresentation to such an  
 2 officer or employee in the course of an investigation  
 3 under this Act or any other Act enforced by the  
 4 Commission.”.

5 (e) CERTIFICATES OF COMPLIANCE WITH MANDA-  
 6 TORY STANDARDS.—Section 19(a)(6) (15 U.S.C.  
 7 2068(a)(6)) is amended to read as follows:

8 “(6) fail to furnish a certificate required by this  
 9 Act or any other Act enforced by the Commission,  
 10 or to issue a false certificate if such person in the  
 11 exercise of due care has reason to know that the cer-  
 12 tificate is false or misleading in any material re-  
 13 spect; or to fail to comply with any rule under sec-  
 14 tion 14(e);”.

15 (f) UNDUE INFLUENCE ON THIRD PARTY LABORA-  
 16 TORIES.—Section 19(a) (15 U.S.C. 2068(a)), as amended  
 17 by subsection (d) of this section, is further amended—

18 (1) by striking “or” after the semicolon in  
 19 paragraph (13);

20 (2) by striking “Commission.” in paragraph  
 21 (14) and inserting “Commission; or”; and

22 (3) by adding at the end thereof the following:

23 “(15) exercise, or attempt to exercise, undue in-  
 24 fluence on a third party laboratory (as defined in  
 25 section 14(e)(2)) with respect to the testing, or re-

1        porting of the results of testing, of any product for  
 2        compliance with a standard under this Act or any  
 3        other Act enforced by the Commission.”.

4    **SEC. 16. PENALTIES.**

5        (a) CIVIL PENALTIES.—

6            (1) IN GENERAL.—Section 20(a) (15 U.S.C.  
 7        2069(a)) is amended—

8            (A) by striking “\$5,000” and inserting  
 9        “\$250,000”;

10          (B) by striking “\$1,250,000” each place it  
 11        appears and inserting “\$20,000,000”; and

12          (C) by striking “December 1, 1994,” in  
 13        paragraph (3)(B) and inserting “December 1,  
 14        2011,”.

15          (2) FEDERAL HAZARDOUS SUBSTANCES ACT.—  
 16        Section 5(c) of the Federal Hazardous Substances  
 17        Act (15 U.S.C. 1264(c)) is amended—

18          (A) by striking “\$5,000” in paragraph (1)  
 19        and inserting “\$250,000”;

20          (B) by striking “\$1,250,000” each place it  
 21        appears in paragraph (1) and inserting  
 22        “\$20,000,000”; and

23          (C) by striking “December 1, 1994,” in  
 24        paragraph (6)(B) and inserting “December 1,  
 25        2011,”.

1           (3) FLAMMABLE FABRICS ACT.—Section 5(e) of  
 2           the Flammable Fabrics Act (15 U.S.C. 1194(e)) is  
 3           amended—

4                   (A) by striking “\$5,000” in paragraph (1)  
 5                   and inserting “\$250,000”;

6                   (B) by striking “\$1,250,000” in paragraph  
 7                   (1) and inserting “\$20,000,000”; and

8                   (C) by striking “December 1, 1994,” in  
 9                   paragraph (5)(B) and inserting “December 1,  
 10                  2011,”.

11           (4) MAXIMUM PENALTY FOR CERTAIN VIOLA-  
 12           TIONS.—Section 20(a)(1) (15 U.S.C. 2069(a)), sec-  
 13           tion 5(c)(1) of the Federal Hazardous Substances  
 14           Act (15 U.S.C. 1264(c)), and section 5(e)(1) of the  
 15           Flammable Fabrics Act (15 U.S.C. 1194(e)) are  
 16           each amended by inserting “The Commission shall  
 17           impose civil penalties exceeding \$10,000,000 under  
 18           this paragraph only when issuing a finding of aggra-  
 19           vated circumstances.” after “violations.”.

20           (b) CRIMINAL PENALTIES.—

21                   (1) IN GENERAL.—Section 21(a) (15 U.S.C.  
 22                   2070(a)) is amended to read as follows:

23           “(a) Violation of section 19 of this Act is punishable  
 24           by—

1 “(1) imprisonment for not more than 5 years  
2 for a knowing and willful violation of that section;

3 “(2) a fine determined under section 3571 of  
4 title 18, United States Code; or

5 “(3) both.”.

6 (2) DIRECTORS, OFFICERS, AND AGENTS.—Sec-  
7 tion 21(b) (15 U.S.C. 2070(b)) is amended by strik-  
8 ing “19, and who has knowledge of notice of non-  
9 compliance received by the corporation from the  
10 Commission,” and inserting “19”.

11 (3) UNDER THE FEDERAL HAZARDOUS SUB-  
12 STANCES ACT.—Section 5(a) of the Federal Haz-  
13 ardous Substances Act (15 U.S.C. 1264(a)) is  
14 amended by striking “one year, or a fine of not more  
15 than \$3,000, or both such imprisonment and fine.”  
16 and inserting “5 years, a fine determined under sec-  
17 tion 3571 of title 18, United States Code, or both.”.

18 (4) UNDER THE FLAMMABLE FABRICS ACT.—  
19 Section 7 of the Flammable Fabrics Act (15 U.S.C.  
20 1196) is amended to read as follows:

21 “PENALTIES

22 “SEC. 7. Violation of section 3 or 8(b) of this Act,  
23 or failure to comply with section 15(c) of this Act, is pun-  
24 ishable by—

25 “(1) imprisonment for not more than 5 years  
26 for a knowing and willful violation of that section;



1           “(2) a fine determined under section 3571 of  
2           title 18, United States Code; or

3           “(3) both.”.

4           (c) CIVIL PENALTY CRITERIA.—Within 1 year after  
5           the date of enactment of this Act, the Consumer Product  
6           Safety Commission shall initiate a rulemaking in accord-  
7           ance with section 553 of title 5, United States Code, to  
8           establish criteria for the imposition of civil penalties under  
9           section 20 of the Consumer Product Safety Act (15 U.S.C.  
10          2069) and any other Act enforced by the Commission, in-  
11          cluding factors to be considered in establishing the amount  
12          of such penalties, such as repeat violations, the preceden-  
13          tial value of prior adjudicated penalties, the factors de-  
14          scribed in section 20(b) of the Consumer Product Safety  
15          Act (15 U.S.C. 2069(b)), and other circumstances.

16          (d) CRIMINAL PENALTIES TO INCLUDE ASSET FOR-  
17          FEITURE.—Section 21 (15 U.S.C. 2070) is amended by  
18          adding at the end thereof the following:

19               “(c)(1) In addition to the penalties provided by sub-  
20          section (a), the penalty for a criminal violation of this Act  
21          or any other Act enforced by the Commission may include  
22          the forfeiture of assets associated with the violation.

23               “(2) In this subsection, the term ‘criminal violation’  
24          means a violation of this Act or any other Act enforced

1 by the Commission for which the violator is sentenced to  
 2 pay a fine, be imprisoned, or both.”.

3 **SEC. 17. PREEMPTION.**

4       The provisions of sections 25 and 26 of the Consumer  
 5 Product Safety Act (15 U.S.C. 2074 and 2075, respec-  
 6 tively)), section 18 of the Federal Hazardous Substances  
 7 Act (15 U.S.C. 1261 note), section 16 of the Flammable  
 8 Fabrics Act (15 U.S.C. 1203), and section 7 of the Poison  
 9 Packaging Prevention Act of 1970 (15 U.S.C. 1476) es-  
 10 tablishing the extent to which those Acts preempt, limit,  
 11 or otherwise affect any other Federal, State, or local law,  
 12 any rule, procedure, or regulation, or any cause of action  
 13 under State or local law may not be expanded or con-  
 14 tracted in scope, or limited, modified or extended in appli-  
 15 cation, by any rule or regulation thereunder, or by ref-  
 16 erence in any preamble, statement of policy, executive  
 17 branch statements, or other matter associated with the  
 18 publication of any such rule or regulation.

19 **SEC. 18. SHARING OF INFORMATION WITH FEDERAL,**  
 20 **STATE, LOCAL, AND FOREIGN GOVERNMENT**  
 21 **AGENCIES.**

22       Section 29 (15 U.S.C. 2078) is amended by adding  
 23 at the end thereof the following:

24       “(f)(1) The Commission may make information ob-  
 25 tained by the Commission under section 6 available to any

1 Federal, State, local, or foreign government agency upon  
2 the prior certification of an appropriate official of any  
3 such agency, either by a prior agreement or memorandum  
4 of understanding with the Commission or by other written  
5 certification, that such material will be maintained in con-  
6 fidence and will be used only for official law enforcement  
7 or consumer protection purposes, if—

8           “(A) the agency has set forth a bona fide legal  
9           basis for its authority to maintain the material in  
10          confidence;

11          “(B) the materials are to be used for purposes  
12          of investigating, or engaging in enforcement pro-  
13          ceedings related to, possible violations of—

14               “(i) laws regulating the manufacture, im-  
15               portation, distribution, or sale of defective or  
16               unsafe consumer products, or other practices  
17               substantially similar to practices prohibited by  
18               any law administered by the Commission;

19               “(ii) a law administered by the Commis-  
20               sion, if disclosure of the material would further  
21               a Commission investigation or enforcement pro-  
22               ceeding; or

23               “(iii) with respect to a foreign law enforce-  
24               ment agency, with the approval of the Attorney  
25               General, other foreign criminal laws, if such

1 foreign criminal laws are offenses defined in or  
2 covered by a criminal mutual legal assistance  
3 treaty in force between the government of the  
4 United States and the foreign law enforcement  
5 agency's government; and

6 “(C) the foreign government agency is not from  
7 a foreign state that the Secretary of State has deter-  
8 mined, in accordance with section 6(j) of the Export  
9 Administration Act of 1979 (50 U.S.C. App.  
10 2405(j)), has repeatedly provided support for acts of  
11 international terrorism, unless and until such deter-  
12 mination is rescinded pursuant to section 6(j)(4) of  
13 that Act (50 U.S.C. App. 2405(j)(4)).

14 “(2) Except as provided in paragraph (3) of this sub-  
15 section, the Commission shall not be required to disclose  
16 under section 552 of title 5, United States Code, or any  
17 other provision of law—

18 “(A) any material obtained from a foreign gov-  
19 ernment agency, if the foreign government agency  
20 has requested confidential treatment, or has pre-  
21 cluded such disclosure under other use limitations,  
22 as a condition of providing the material;

23 “(B) any material reflecting a consumer com-  
24 plaint obtained from any other foreign source, if the  
25 foreign source supplying the material has requested

1 confidential treatment as a condition of providing  
2 the material; or

3 “(C) any material reflecting a consumer com-  
4 plaint submitted to a Commission reporting mecha-  
5 nism sponsored in part by foreign government agen-  
6 cies.

7 “(3) Nothing in this subsection shall authorize the  
8 Commission to withhold information from the Congress or  
9 prevent the Commission from complying with an order of  
10 a court of the United States in an action commenced by  
11 the United States or the Commission.

12 “(4) The Commission may terminate a memorandum  
13 of understanding or other agreement with another agency  
14 if it determines that the other agency has not handled in-  
15 formation made available by the Commission under para-  
16 graph (1) or has failed to maintain confidentiality with  
17 respect to the information.

18 “(5) In this subsection, the term ‘foreign government  
19 agency’ means—

20 “(A) any agency or judicial authority of a for-  
21 eign government, including a foreign state, a polit-  
22 ical subdivision of a foreign state, or a multinational  
23 organization constituted by and comprised of foreign  
24 states, that is vested with law enforcement or inves-

1        tigtative authority in civil, criminal, or administrative  
2        matters; and

3            “(B) any multinational organization, to the ex-  
4        tent that it is acting on behalf of an entity described  
5        in subparagraph (A).”.

6    **SEC. 19. FINANCIAL RESPONSIBILITY.**

7        (a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.)  
8        is amended by adding at the end thereof the following:

9            “FINANCIAL RESPONSIBILITY

10        “SEC. 39. (a) The Commission, in a rulemaking pro-  
11        ceeding, may establish procedures to require the posting  
12        of an escrow, proof of insurance, or security acceptable  
13        to the Commission by—

14            “(1) a person that has committed multiple sig-  
15        nificant violations of this Act or any rule or Act en-  
16        forced by the Commission;

17            “(2) the manufacturer or distributor of a cat-  
18        egory or class of consumer products; or

19            “(3) the manufacturer or distributor of any  
20        consumer product or any product or substance regu-  
21        lated under any other Act enforced by the Commis-  
22        sion.

23        “(b) AMOUNT.—The escrow, proof of insurance, or  
24        security required by the Commission under subsection (a)  
25        shall be in an amount sufficient—

1 “(1) to cover the costs of an effective recall of  
2 the product or substance; or

3 “(2) to cover the costs of holding the product  
4 and the destruction of the product should such ac-  
5 tion be required by the Commission under this Act  
6 or any other act enforced by the Commission.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) The table of contents is amended by strik-  
9 ing the item relating to section 10 and inserting the  
10 following:

“Sec. 10. [Repealed].”.

11 (2) The table of contents is amended by insert-  
12 ing after the item relating to section 34 the fol-  
13 lowing:

“Sec. 35. Interim cellulose insulation safety standard.

“Sec. 36. Congressional veto of consumer product safety rules.

“Sec. 37. Information reporting.

“Sec. 38. Low-speed electric bicycles.

“Sec. 39. Financial responsibility.”.

14 **SEC. 20. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

15 (a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.)  
16 is amended by inserting after section 26 the following:

17 “ENFORCEMENT BY STATE ATTORNEYS GENERAL

18 “SEC. 26A. (a) Except as provided in subsection (f),  
19 whenever the attorney general of a State has reason to  
20 believe that the interests of the residents of that State  
21 have been, or are being, threatened or adversely affected  
22 by a violation of any consumer product safety rule, regula-

1 tion, standard, certification or labeling requirement, or  
 2 order prescribed under this Act or any other Act enforced  
 3 by the Commission (including the sale of a voluntarily or  
 4 mandatorily recalled product or of a banned hazardous  
 5 substance or product), the State, as *parens patriae*, may  
 6 bring a civil action on behalf of its residents in an appro-  
 7 priate district court of the United States to obtain injunc-  
 8 tive relief provided under such Act.

9       “(b) The State shall serve written notice to the Com-  
 10 mission of any civil action under subsection (a) at least  
 11 60 days prior to initiating such civil action. The notice  
 12 shall include a copy of the complaint to be filed to initiate  
 13 such civil action, except that if it is not feasible for the  
 14 State to provide such prior notice, the State shall provide  
 15 notice immediately upon instituting such civil action.

16       “(c) Upon receiving the notice required by subsection  
 17 (b), the Commission may intervene in such civil action and  
 18 upon intervening—

19               “(1) be heard on all matters arising in such  
 20 civil action; and

21               “(2) file petitions for appeal of a decision in  
 22 such civil action.

23       “(d) Nothing in this section shall prevent the attor-  
 24 ney general of a State from exercising the powers con-  
 25 ferred on the attorney general, or other authorized State



1 officer, by the laws of such State. Nothing in this section  
 2 shall prohibit the attorney general of a State, or other au-  
 3 thorized State officer, from proceeding in State or Federal  
 4 court on the basis of an alleged violation of any civil or  
 5 criminal statute of that State.

6 “(e) In a civil action brought under subsection (a)—

7 “(1) the venue shall be a judicial district in  
 8 which—

9 “(A) the manufacturer, distributor, or re-  
 10 tailer operates; or

11 “(B) the manufacturer, distributor, or re-  
 12 tailer is authorized to do business;

13 “(2) process may be served without regard to  
 14 the territorial limits of the district or of the State  
 15 in which the civil action is instituted; and

16 “(3) a person who participated with a manufac-  
 17 turer, distributor, or retailer in an alleged violation  
 18 that is being litigated in the civil action may be  
 19 joined in the civil action without regard to the resi-  
 20 dence of the person.

21 “(f) If the Commission has instituted a civil action  
 22 or an administrative action for violation of this Act or any  
 23 other Act enforced by the Commission, no State attorney  
 24 general, or other official or agency of a State, may bring  
 25 an action under this section during the pendency of that

1 action against any defendant named in the complaint of  
 2 the Commission for any violation of this Act alleged in  
 3 the complaint.

4 “(g) If the attorney general of the State prevails in  
 5 any civil action under subsection (a), it can recover reason-  
 6 able costs and attorney fees from the manufacturer, dis-  
 7 tributor, or retailer.”.

8 (b) CONFORMING AMENDMENT.—The table of con-  
 9 tents is amended by inserting after the item relating to  
 10 section 26 the following:

“Sec. 26A. Enforcement by state attorneys general.”.

11 **SEC. 21. WHISTLEBLOWER PROTECTIONS.**

12 (a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.),  
 13 as amended by section 19, is further amended by adding  
 14 at the end the following:

15 “WHISTLEBLOWER PROTECTION

16 “SEC. 40. (a) No manufacturer, private labeler, dis-  
 17 tributor, or retailer, nor any Federal, State, or local gov-  
 18 ernment agency, may discharge an employee or otherwise  
 19 discriminate against an employee with respect to com-  
 20 pensation, terms, conditions, or privileges of employment  
 21 because the employee, whether at the employee’s initiative  
 22 or in the ordinary course of the employee’s duties (or any  
 23 person acting pursuant to a request of the employee)—

24 “(1) provided, caused to be provided, or is  
 25 about to provide or cause to be provided to the em-

1        ployer, the Federal Government, or the attorney  
2        general of a State information relating to any viola-  
3        tion of, or any act or omission the employee reason-  
4        ably believes to be a violation of an order, regula-  
5        tion, rule, or other provision of this Act or any other  
6        Act enforced by the Commission;

7            “(2) testified or is about to testify in a pro-  
8        ceeding concerning such violation;

9            “(3) assisted or participated or is about to as-  
10        sist or participate in such a proceeding; or

11           “(4) objected to, or refused to participate in,  
12        any activity, policy, practice, or assigned task that  
13        the employee (or other such person) reasonably be-  
14        lieved to be in violation of an order, regulation, rule,  
15        or other provision of this Act or any other Act en-  
16        forced by the Commission.

17        “(b)(1) A person who believes that he or she has been  
18        discharged or otherwise discriminated against by any per-  
19        son in violation of subsection (a) may, not later than 180  
20        days after the date on which such violation occurs, file  
21        (or have any person file on his or her behalf) a complaint  
22        with the Secretary of Labor alleging such discharge or dis-  
23        crimination and identifying the person responsible for  
24        such act. Upon receipt of such a complaint, the Secretary  
25        shall notify, in writing, the person named in the complaint

1 of the filing of the complaint, of the allegations contained  
2 in the complaint, of the substance of evidence supporting  
3 the complaint, and of the opportunities that will be af-  
4 farded to such person under paragraph (2).

5       “(2)(A) Not later than 60 days after the date of re-  
6 ceipt of a complaint filed under paragraph (1) and after  
7 affording the complainant and the person named in the  
8 complaint an opportunity to submit to the Secretary a  
9 written response to the complaint and an opportunity to  
10 meet with a representative of the Secretary to present  
11 statements from witnesses, the Secretary shall initiate an  
12 investigation and determine whether there is reasonable  
13 cause to believe that the complaint has merit and notify,  
14 in writing, the complainant and the person alleged to have  
15 committed a violation of subsection (a) of the Secretary’s  
16 findings. If the Secretary concludes that there is reason-  
17 able cause to believe that a violation of subsection (a) has  
18 occurred, the Secretary shall accompany the Secretary’s  
19 findings with a preliminary order providing the relief pre-  
20 scribed by paragraph (3)(B). Not later than 30 days after  
21 the date of notification of findings under this paragraph,  
22 either the person alleged to have committed the violation  
23 or the complainant may file objections to the findings or  
24 preliminary order, or both, and request a hearing on the  
25 record. The filing of such objections shall not operate to

1 stay any reinstatement remedy contained in the prelimi-  
2 nary order. Any such hearing shall be conducted expedi-  
3 tiously. If a hearing is not requested in such 30-day pe-  
4 riod, the preliminary order shall be deemed a final order  
5 that is not subject to judicial review.

6 “(B)(i) The Secretary shall dismiss a complaint filed  
7 under this subsection and shall not conduct an investiga-  
8 tion otherwise required under subparagraph (A) unless the  
9 complainant makes a prima facie showing that any behav-  
10 ior described in paragraphs (1) through (4) of subsection  
11 (a) was a contributing factor in the unfavorable personnel  
12 action alleged in the complaint.

13 “(ii) Notwithstanding a finding by the Secretary that  
14 the complainant has made the showing required under  
15 clause (i), no investigation otherwise required under sub-  
16 paragraph (A) shall be conducted if the employer dem-  
17 onstrates, by clear and convincing evidence, that the em-  
18 ployer would have taken the same unfavorable personnel  
19 action in the absence of that behavior.

20 “(iii) The Secretary may determine that a violation  
21 of subsection (a) has occurred only if the complainant  
22 demonstrates that any behavior described in paragraphs  
23 (1) through (4) of subsection (a) was a contributing factor  
24 in the unfavorable personnel action alleged in the com-  
25 plaint.

1       “(iv) Relief may not be ordered under subparagraph  
2 (A) if the employer demonstrates by clear and convincing  
3 evidence that the employer would have taken the same un-  
4 favorable personnel action in the absence of that behavior.

5       “(3)(A) Not later than 120 days after the date of  
6 conclusion of any hearing under paragraph (2), the Sec-  
7 retary shall issue a final order providing the relief pre-  
8 scribed by this paragraph or denying the complaint. At  
9 any time before issuance of a final order, a proceeding  
10 under this subsection may be terminated on the basis of  
11 a settlement agreement entered into by the Secretary, the  
12 complainant, and the person alleged to have committed the  
13 violation.

14       “(B) If, in response to a complaint filed under para-  
15 graph (1), the Secretary determines that a violation of  
16 subsection (a) has occurred, the Secretary shall order the  
17 person who committed such violation—

18               “(i) to take affirmative action to abate the vio-  
19 lation;

20               “(ii) to reinstate the complainant to his or her  
21 former position together with compensation (includ-  
22 ing back pay) and restore the terms, conditions, and  
23 privileges associated with his or her employment;  
24 and

1           “(iii) to provide compensatory damages to the  
2           complainant.

3   If such an order is issued under this paragraph, the Sec-  
4   retary, at the request of the complainant, shall assess  
5   against the person against whom the order is issued a sum  
6   equal to the aggregate amount of all costs and expenses  
7   (including attorneys’ and expert witness fees) reasonably  
8   incurred, as determined by the Secretary, by the complain-  
9   ant for, or in connection with, the bringing of the com-  
10   plaint upon which the order was issued.

11       “(C) If the Secretary finds that a complaint under  
12   paragraph (1) is frivolous or has been brought in bad  
13   faith, the Secretary may award to the prevailing employer  
14   a reasonable attorneys’ fee, not exceeding \$1,000, to be  
15   paid by the complainant.

16       “(4) If the Secretary has not issued a final decision  
17   within 210 days after the filing of the complaint, or within  
18   90 days after receiving a written determination, the com-  
19   plainant may bring an action at law or equity for review  
20   in the appropriate district court of the United States with  
21   jurisdiction, which shall have jurisdiction over such an ac-  
22   tion without regard to the amount in controversy, and  
23   which action shall, at the request of either party to such  
24   action, be tried by the court with a jury. The proceedings  
25   shall be governed by the same legal burdens of proof speci-

1 filed in paragraph (2)(B). The court shall have jurisdiction  
2 to grant all appropriate relief to the employee available  
3 by law or equity, including injunctive relief, compensatory  
4 and consequential damages, reasonable attorneys and ex-  
5 pert witness fees, court costs, and punitive damages up  
6 to \$250,000.

7 “(5)(A) Any person adversely affected or aggrieved  
8 by a final order issued under paragraph (3) may obtain  
9 review of the order in the United States Court of Appeals  
10 for the circuit in which the violation, with respect to which  
11 the order was issued, allegedly occurred or the circuit in  
12 which the complainant resided on the date of such viola-  
13 tion. The petition for review must be filed not later than  
14 60 days after the date of the issuance of the final order  
15 of the Secretary. Review shall conform to chapter 7 of title  
16 5, United States Code. The commencement of proceedings  
17 under this subparagraph shall not, unless ordered by the  
18 court, operate as a stay of the order.

19 “(B) An order of the Secretary with respect to which  
20 review could have been obtained under subparagraph (A)  
21 shall not be subject to judicial review in any criminal or  
22 other civil proceeding.

23 “(6) Whenever any person has failed to comply with  
24 an order issued under paragraph (3), the Secretary may  
25 file a civil action in the United States district court for



1 the district in which the violation was found to occur, or  
2 in the United States district court for the District of Co-  
3 lumbia, to enforce such order. In actions brought under  
4 this paragraph, the district courts shall have jurisdiction  
5 to grant all appropriate relief including, but not limited  
6 to, injunctive relief and compensatory damages.

7 “(7)(A) A person on whose behalf an order was  
8 issued under paragraph (3) may commence a civil action  
9 against the person to whom such order was issued to re-  
10 quire compliance with such order. The appropriate United  
11 States district court shall have jurisdiction, without regard  
12 to the amount in controversy or the citizenship of the par-  
13 ties, to enforce such order.

14 “(B) The court, in issuing any final order under this  
15 paragraph, may award costs of litigation (including rea-  
16 sonable attorneys’ and expert witness fees) to any party  
17 whenever the court determines such award is appropriate.

18 “(c) Any nondiscretionary duty imposed by this sec-  
19 tion shall be enforceable in a mandamus proceeding  
20 brought under section 1361 of title 28, United States  
21 Code.

22 “(d) Subsection (a) shall not apply with respect to  
23 an employee of a manufacturer, private labeler, dis-  
24 tributor, or retailer who, acting without direction from  
25 such manufacturer, private labeler, distributor, or retailer

1 (or such person’s agent), deliberately causes a violation  
 2 of any requirement relating to any violation or alleged vio-  
 3 lation of any order, regulation, or consumer product safety  
 4 standard under this Act or any other law enforced by the  
 5 Commission.”.

6 (b) CONFORMING AMENDMENT.—The table of con-  
 7 tents, as amended by section 19 of this Act, is further  
 8 amended by inserting after the item relating to section 39  
 9 the following:

“Sec. 40. Whistleblower protection.”.

10 **SEC. 22. BAN ON CHILDREN’S PRODUCTS CONTAINING**  
 11 **LEAD; LEAD PAINT RULE.**

12 (a) IN GENERAL.—Beginning on the date that is 1  
 13 year after the date of enactment of this Act, any children’s  
 14 product (as defined in section 14(e) of the Consumer  
 15 Product Safety Act (15 U.S.C. 2063(e))) that contains  
 16 lead shall be treated as a banned hazardous substance  
 17 under the Federal Hazardous Substances Act (15 U.S.C.  
 18 1261 et seq.).

19 (b) TRACE AMOUNTS OF LEAD.—

20 (1) INITIAL STANDARD.—For purposes of sub-  
 21 section (a), a children’s product shall be considered  
 22 to contain lead if any part of the product contains  
 23 lead or lead compounds and the lead content of such  
 24 part (calculated as lead metal) is greater than 0.03  
 25 percent by weight of the total weight of such part

1 (or such lesser amount as may be established by the  
2 Commission by regulation).

3 (2) REDUCED THRESHOLD.—

4 (A) IN GENERAL.—Beginning on the date  
5 that is 3 years after the date of enactment of  
6 this Act, paragraph (1) shall be applied by sub-  
7 stituting “0.01 percent” for “0.03 percent” un-  
8 less the Consumer Product Safety Commission  
9 determines that a standard of 0.01 percent is  
10 not technologically feasible. The Commission  
11 may make such a determination only after no-  
12 tice and a hearing and after analyzing the pub-  
13 lic health protections associated with substan-  
14 tially reducing lead in children’s products.

15 (B) ALTERNATIVE REDUCTION.—If the  
16 Commission determines under subparagraph  
17 (A) that the 0.01 percent standard is not tech-  
18 nologically feasible, the Commission shall, by  
19 regulation, establish a lesser amount that is the  
20 lowest amount of lead, lower than 0.03 percent  
21 by weight, the Commission determines to be  
22 technologically feasible to achieve. The amount  
23 of lead established by the Commission under  
24 the preceding sentence shall be substituted for  
25 the 0.03 percent standard under paragraph (1)

1 beginning on the date that is 3 years after the  
2 date of enactment of this Act.

3 (c) EXCEPTIONS.—

4 (1) INACCESSIBLE COMPONENTS.—After notice  
5 and a hearing, the Commission may determine that  
6 subsection (a) does not apply to a component of a  
7 children’s product that is not accessible to a child  
8 because it is not physically exposed by reason of a  
9 sealed covering or casing and will not become phys-  
10 ically exposed through normal and reasonably fore-  
11 seeable use and abuse of the product. In making its  
12 determination under this paragraph, the Commission  
13 may not consider paint, coatings, or electroplating to  
14 be a barrier that would render lead in the substrate  
15 inaccessible to a child through normal and reason-  
16 ably foreseeable use and abuse of the product.

17 (2) ELECTRONICS.—If the Commission deter-  
18 mines that it is not feasible for certain electronic de-  
19 vices, including batteries, to comply with subsection  
20 (a) at the time the regulations take effect, the Com-  
21 mission shall, by regulation—

22 (A) issue standards to reduce the exposure  
23 of and accessibility to lead in such electronic de-  
24 vices; and

1           (B) establish a schedule by which such  
2           electronic devices shall be in full compliance  
3           with the regulations prescribed under sub-  
4           section (a).

5           (d) REGULATIONS.—Notwithstanding the provisions  
6           of subsection (b), the Commission may by regulation es-  
7           tablish such lower thresholds for lead content in children’s  
8           products than those set forth in subsection (b) as the  
9           Commission finds to be technologically feasible.

10          (e) PAINT STANDARD FOR ALL PRODUCTS.—Effec-  
11          tive on the date that is 1 year after the date of enactment  
12          of this Act, the Consumer Product Safety Commission  
13          shall modify section 1303.1 of its regulations (16 C.F.R.  
14          1303.1) by substituting “0.009 percent” for “0.06 per-  
15          cent” in subsection (a) of that section.

16          (f) APPLICATION WITH ASTM F963.—To the extent  
17          that any standard or rule promulgated by the Consumer  
18          Product Safety Commission under this section (or any sec-  
19          tion of the Consumer Product Safety Act or any other Act  
20          enforced by the Commission, as such Acts are affected by  
21          this section) is inconsistent with the ASTM F963 stand-  
22          ard, such promulgated standard or rule shall supersede  
23          the ASTM F963 standard to the extent of the inconsis-  
24          tency.

1 **SEC. 23. ALTERNATIVE MEASURES OF LEAD CONTENT.**

2       The Consumer Product Safety Commission, in co-  
 3 operation with the National Academy of Sciences and the  
 4 National Institute of Standards and Technology, shall  
 5 study the feasibility of establishing a measurement stand-  
 6 ard based on a units-of-mass-per-area standard (similar  
 7 to existing measurement standards used by the Depart-  
 8 ment of Housing and Urban Development and the Envi-  
 9 ronmental Protection Agency to measure for metals in  
 10 household paint and soil, respectively) that is statistically  
 11 comparable to the parts-per-million measurement stand-  
 12 ard currently used in laboratory analysis.

13 **SEC. 24. STUDY OF PREVENTABLE INJURIES AND DEATHS**  
 14 **OF MINORITY CHILDREN RELATED TO CER-**  
 15 **TAIN CONSUMER PRODUCTS.**

16       (a) IN GENERAL.—Within 90 days after the date of  
 17 enactment of this Act, the Government Accountability Of-  
 18 fice shall initiate a study to assess disparities in the risks  
 19 and incidence of preventable injuries and deaths among  
 20 children of minority populations, including Black, His-  
 21 panic, American Indian, Alaskan Native, and Asian/Pa-  
 22 cific Islander children in the United States.

23       (b) REQUIREMENTS.—The study shall examine the  
 24 racial disparities of the rates of preventable injuries and  
 25 deaths related to suffocation, poisonings, and drowning in-  
 26 cluding those associated with the use of cribs, mattresses

1 and bedding materials, swimming pools and spas, and toys  
2 and other products intended for use by children.

3 (c) REPORT.—Not later than 1 year after the date  
4 of enactment of this Act, the Commission shall report its  
5 findings to the Senate Commerce, Science, and Transpor-  
6 tation Committee and the House of Representatives En-  
7 ergy and Commerce Committee. The report shall in-  
8 clude—

9 (1) the Commission’s findings on the incidence  
10 of preventable risks of injury and death among chil-  
11 dren of minority populations and recommendations  
12 for minimizing such increased risks;

13 (2) recommendations for public outreach,  
14 awareness, and prevention campaigns specifically  
15 aimed at racial minority populations; and

16 (3) recommendations for education initiatives  
17 that may reduce current statistical disparities.

18 (d) AUTHORIZATION.—There are authorized to be ap-  
19 propriated to the Commission \$500,000 for purposes of  
20 carrying out this section for fiscal year 2009.

21 **SEC. 25. COST-BENEFIT ANALYSIS UNDER THE POISON**  
22 **PREVENTION PACKAGING ACT OF 1970.**

23 Section 3 of the Poison Prevention Packaging Act of  
24 1970 (15 U.S.C. 1472) is amended by adding at the end  
25 thereof the following:

1       “(e) Nothing in this Act shall be construed to require  
2 the Secretary, in establishing a standard under this sec-  
3 tion, to prepare a comparison of the costs that would be  
4 incurred in complying with such standard with the bene-  
5 fits of such standard.”.

6 **SEC. 26. INSPECTOR GENERAL REPORTS.**

7       (a) IMPLEMENTATION BY THE COMMISSION.—

8           (1) IN GENERAL.—The Inspector General of  
9 the Consumer Product Safety Commission shall con-  
10 duct reviews and audits of implementation of the  
11 Consumer Product Safety Act by the Commission,  
12 including—

13           (A) an assessment of the ability of the  
14 Commission to enforce subsections (a)(2) and  
15 (d) of section 14 of the Act (15 U.S.C. 2063),  
16 as amended by section 10 of this Act, including  
17 the ability of the Commission to enforce the  
18 prohibition on imports of children’s products  
19 without third party testing certification under  
20 section 17(a)(6) of the Act (15 U.S.C.  
21 2066)(a)(6), as added by section 10 of this Act;

22           (B) an assessment of the ability of the  
23 Commission to enforce section 14(a)(6) of the  
24 Act (15 U.S.C. 2063(a)(6)), as added by sec-



1           tion 11 of this Act, and section 16(c) of the  
2           Act, as added by section 14 of this Act; and

3           (C) an audit of the Commission's capital  
4           improvement efforts, including construction of a  
5           new testing facility.

6           (2) ANNUAL REPORT.—The Inspector General  
7           shall submit an annual report, setting forth the In-  
8           spector General's findings, conclusions, and rec-  
9           ommendations from the reviews and audits under  
10          paragraph (1), for each of fiscal years 2009 through  
11          2015 to the Commission, the Senate Committee on  
12          Commerce, Science, and Transportation, and the  
13          House of Representatives Committee on Energy and  
14          Commerce.

15          (b) EMPLOYEE COMPLAINTS.—

16               (1) IN GENERAL.—Within 1 year after the date  
17               of enactment of this Act, the Inspector General shall  
18               conduct a review of—

19                       (A) complaints received by the Inspector  
20                       General from employees of the Commission  
21                       about violations of rules or regulations of the  
22                       Consumer Product Safety Act or any other Act  
23                       enforced by the Commission; and

24                       (B) the process by which corrective action  
25                       plans are negotiated with such employees by the

1 Commission, including an assessment of the  
2 length of time for these negotiations and the ef-  
3 fectiveness of the plans.

4 (2) REPORT.—The Inspector General shall sub-  
5 mit a report, setting forth the Inspector General’s  
6 findings, conclusions, and recommendations, to the  
7 Commission, the Senate Committee on Commerce,  
8 Science, and Transportation, and the House of Rep-  
9 resentatives Committee on Energy and Commerce.

10 (c) LEAKS.—

11 (1) IN GENERAL.—Within 1 year after the date  
12 of enactment of this Act, the Inspector General  
13 shall—

14 (A) conduct a review of whether, and to  
15 what extent, there have been unauthorized and  
16 unlawful disclosures of information by Mem-  
17 bers, officers, or employees of the Commission  
18 to persons not authorized to receive such infor-  
19 mation; and

20 (B) to the extent that such unauthorized  
21 and unlawful disclosures have occurred, deter-  
22 mine—

23 (i) what class or kind of information  
24 was most frequently involved in such dis-  
25 closures; and

1 (ii) how frequently such disclosures  
2 have occurred.

3 (2) REPORT.—The Inspector General shall sub-  
4 mit a report, setting forth the Inspector General’s  
5 findings, conclusions, and recommendations, to the  
6 Commission, the Senate Committee on Commerce,  
7 Science, and Transportation, and the House of Rep-  
8 resentatives Committee on Energy and Commerce.

9 **SEC. 27. PUBLIC INTERNET WEBSITE LINKS.**

10 Not later than 30 days after the date of enactment  
11 of this Act, the Consumer Product Safety Commission  
12 shall establish and maintain—

13 (1) a direct link on the homepage of its Inter-  
14 net website to the Internet website of the Commis-  
15 sion’s Office of Inspector General; and

16 (2) a mechanism on the homepage of the Office  
17 of Inspector General’s Internet website by which in-  
18 dividuals may anonymously report cases of waste,  
19 fraud, or abuse with respect to the Commission.

20 **SEC. 28. CHILD-RESISTANT PORTABLE GASOLINE CON-**  
21 **TAINERS.**

22 (a) CONSUMER PRODUCT SAFETY RULE.—

23 (1) ESTABLISHMENT.—There is established, as  
24 a consumer product safety rule promulgated by the  
25 Commission in accordance with section 9 of the Con-

1 consumer Product Safety Act (15 U.S.C. 2058), a re-  
2 quirement that each portable gasoline container for  
3 sale in the United States shall conform to the child-  
4 resistance requirements for closures on portable gas-  
5 oline containers specified in the standard ASTM  
6 F2517-05, issued by ASTM International.

7 (b) REVISION OF RULE.—

8 (1) IN GENERAL.—Except as provided in para-  
9 graph (2), if, after the date of the enactment of this  
10 Act, ASTM International proposes to revise the child  
11 resistance requirements of ASTM F2517-05—

12 (A) ASTM International shall notify the  
13 Commission of the proposed revision; and

14 (B) the proposed revision shall be incor-  
15 porated in the consumer product safety rule es-  
16 tablished by subsection (a).

17 (2) EXCEPTION.—If, not later than 60 days  
18 after the date of the notice described in paragraph  
19 (1)(A), the Commission notifies ASTM International  
20 that the Commission has determined that such revi-  
21 sion is inconsistent with subsection (a), the require-  
22 ment of paragraph (1)(B) shall not apply.

23 (c) IMPLEMENTING REGULATIONS.—With respect to  
24 the promulgation of any regulations by the Commission  
25 to implement the requirements of this section—

1 (1) section 553 of title 5, United States Code,  
2 shall apply; and

3 (2) sections 7 and 9 of the Consumer Product  
4 Safety Act (15 U.S.C. 2056 and 2058) shall not  
5 apply.

6 (d) REPORT.—Not later than 2 years after the date  
7 of enactment of this Act, the Commission shall submit to  
8 the Senate Committee on Commerce, Science, and Trans-  
9 portation and the House of Representatives Committee on  
10 Energy and Commerce a report on—

11 (1) the degree of industry compliance with the  
12 consumer product safety rule established by sub-  
13 section (a);

14 (2) any enforcement actions brought by the  
15 Commission to enforce such rule; and

16 (3) incidents involving children interacting with  
17 portable gasoline containers (including both those  
18 that are and are not in compliance with the rule es-  
19 tablished by subsection (a)).

20 (e) DEFINITIONS.—In this section:

21 (1) COMMISSION.—The term “Commission”  
22 means the Consumer Product Safety Commission.

23 (2) PORTABLE GASOLINE CONTAINER.—The  
24 term “portable gasoline container” means any port-

1       able gasoline container intended for use by con-  
2       sumers.

3       (f) **EFFECTIVE DATE.**—The rule established by sub-  
4       section (a) shall apply to portable gasoline containers  
5       manufactured on or after the date that is 6 months after  
6       the date of enactment of this Act.

7       **SEC. 29. TOY SAFETY STANDARD.**

8       (a) **IN GENERAL.**—Beginning 60 days after the date  
9       of enactment of this Act, ASTM–International Standard  
10      F963–07, Consumer Safety Specifications for Toy Safety,  
11      as it exists on the date of enactment of this Act shall be  
12      considered to be a consumer product safety rule issued by  
13      the Consumer Product Safety Commission under section  
14      9 of the Consumer Product Safety Act (15 U.S.C. 2058).

15      (b) **REVISIONS.**—If more than 60 days after the date  
16      of enactment of this Act, ASTM–International proposes  
17      to revise Standard F963–07, Consumer Safety Specifica-  
18      tions for Toy Safety, or a successor standard, it shall no-  
19      tify the Commission of the proposed revision and the pro-  
20      posed revision shall be incorporated in the consumer prod-  
21      uct safety rule. The revised standard shall be considered  
22      to be a consumer product safety rule issued by the Con-  
23      sumer Product Safety Commission under section 9 of the  
24      Consumer Product Safety Act (15 U.S.C. 2058), effective  
25      30 days after the date on which ASTM–International noti-

1 files the Commission of the revision unless, within 60 days  
 2 after receiving that notice, the Commission notifies  
 3 ASTM–International that it has determined that the pro-  
 4 posed revision does not improve the safety of the consumer  
 5 product covered by the standard. If the Commission so  
 6 notifies ASTM–International with respect to a proposed  
 7 revision of the standard, the existing standard shall con-  
 8 tinue to be considered to be a consumer product safety  
 9 rule without regard to the proposed revision.

10 **SEC. 30. ALL-TERRAIN VEHICLE SAFETY STANDARD.**

11 (a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.),  
 12 as amended by section 21 of this Act, is further amended  
 13 by adding at the end thereof the following:

14 “ALL-TERRAIN VEHICLE SAFETY STANDARD

15 “SEC. 41. (a) IN GENERAL.—

16 “(1) MANDATORY STANDARD.—Notwith-  
 17 standing any other provision of law, within 90 days  
 18 after the date of enactment of the CPSC Reform  
 19 Act the Commission shall publish in the Federal  
 20 Register as a mandatory consumer product safety  
 21 standard the American National Standard for Four  
 22 Wheel All-Terrain Vehicles Equipment Configura-  
 23 tion, and Performance Requirements developed by  
 24 the Specialty Vehicle Institute of America (American  
 25 National Standard ANSI/SVIA–1–2007). The stand-  
 26 ard shall take effect 150 days after it is published.

1           “(2) COMPLIANCE WITH STANDARD.—After the  
2           standard takes effect, it shall be unlawful for any  
3           manufacturer or distributor to import into or dis-  
4           tribute in commerce in the United States any new  
5           assembled or unassembled all-terrain vehicle un-  
6           less—

7                   “(A) the vehicle complies with each appli-  
8                   cable provision of the standard;

9                   “(B) the vehicle is subject to an ATV ac-  
10                  tion plan filed with the Commission before the  
11                  date of enactment of the CPSC Reform Act, or  
12                  subsequently filed with and approved by the  
13                  Commission, and bears a label certifying such  
14                  compliance and identifying the manufacturer,  
15                  importer or private labeler and the ATV action  
16                  plan to which it is subject; and

17                  “(C) the manufacturer or distributor is in  
18                  compliance with all provisions of the applicable  
19                  ATV action plan.

20           “(3) VIOLATION.—The failure to comply with  
21           any requirement of paragraph (2) shall be deemed to  
22           be a failure to comply with a consumer product safe-  
23           ty rule under this Act and subject to all of the pen-  
24           alties and remedies available under this Act.



1           “(4) COMPLIANT MODELS WITH ADDITIONAL  
2     FEATURES.—Paragraph (2) shall not be construed  
3     to prohibit the distribution in interstate commerce of  
4     new all-terrain vehicles that comply with the require-  
5     ments of that paragraph but also incorporate char-  
6     acteristics or components that are not covered by  
7     those requirements. Any such characteristics or com-  
8     ponents shall be subject to the requirements of sec-  
9     tion 15 of this Act.

10          “(b) MODIFICATION OF ALL-TERRAIN VEHICLE  
11     SAFETY STANDARD.—

12           “(1) ANSI REVISIONS.—If the American Na-  
13     tional Standard ANSI/SVIA-1-2007 is revised  
14     through the applicable consensus standards develop-  
15     ment process after the date on which the product  
16     safety standard for all-terrain vehicles is published  
17     in the Federal Register, the American National  
18     Standards Institute shall notify the Commission of  
19     the revision.

20           “(2) COMMISSION ACTION.—Within 120 days  
21     after it receives notice of such a revision by the  
22     American National Standards Institute, the Com-  
23     mission shall issue a notice of proposed rulemaking  
24     in accordance with section 553 of title 5, United  
25     States Code, to amend the product safety standard

1 for all-terrain vehicles to include any such revision  
2 that the Commission determines is reasonably re-  
3 lated to the safe performance of all-terrain vehicles,  
4 and notify the Institute of any provision it has de-  
5 termined not to be so related. The Commission shall  
6 promulgate an amendment to the standard for all-  
7 terrain vehicles within 180 days after the date on  
8 which the notice of proposed rulemaking for the  
9 amendment is published in the Federal Register.

10 “(3) UNREASONABLE RISK OF INJURY.—Not-  
11 withstanding any other provision of this Act, the  
12 Commission may, pursuant to sections 7 and 9 of  
13 this Act, amend the product safety standard for all-  
14 terrain vehicles to include any additional provision  
15 that the Commission determines is reasonably nec-  
16 essary to reduce an unreasonable risk of injury asso-  
17 ciated with the performance of all-terrain vehicles.

18 “(4) CERTAIN PROVISIONS NOT APPLICABLE.—  
19 Sections 7, 9, 11, and 30(d) of this Act shall not  
20 apply to promulgation of any amendment of the  
21 product safety standard under paragraph (2). Judi-  
22 cial review of any amendment of the standard under  
23 paragraph (2) shall be in accordance with chapter 7  
24 of title 5, United States Code.

1       “(c) REQUIREMENTS FOR 3-WHEELED ALL-TERRAIN  
 2 VEHICLES.—Until a mandatory consumer product safety  
 3 rule applicable to 3-wheeled all-terrain vehicles promul-  
 4 gated pursuant to this Act is in effect, new 3-wheeled all-  
 5 terrain vehicles may not be imported into or distributed  
 6 in commerce in the United States. Any violation of this  
 7 subsection shall be considered to be a violation of section  
 8 19(a)(1) of this Act and may also be enforced under sec-  
 9 tion 17 of this Act.

10       “(d) FURTHER PROCEEDINGS.—

11               “(1) DEADLINE.—The Commission shall issue a  
 12 final rule in its proceeding entitled ‘Standards for  
 13 All Terrain Vehicles and Ban of Three-wheeled All  
 14 Terrain Vehicles’.

15               “(2) CATEGORIES OF YOUTH ATVS.—In the  
 16 final rule, the Commission may provide for a mul-  
 17 tiple factor method of categorization that, at a min-  
 18 imum, takes into account—

19                       “(A) the weight of the vehicle;

20                       “(B) the maximum speed of the vehicle;

21                       “(C) the velocity at which a vehicle of a  
 22 given weight is traveling at the maximum speed  
 23 of the vehicle;

1           “(D) the age of children for whose oper-  
 2           ation the vehicle is designed or who may rea-  
 3           sonably be expected to operate the vehicle; and

4           “(E) the average weight of children for  
 5           whose operation the vehicle is designed or who  
 6           may reasonably be expected to operate the vehi-  
 7           cle.

8           “(e) DEFINITIONS.—In this section:

9           “(1) ALL-TERRAIN VEHICLE OR ATV.—The  
 10          term ‘all-terrain vehicle’ or ‘ATV’ means—

11           “(A) any motorized, off-highway vehicle  
 12           designed to travel on 3 or 4 wheels, having a  
 13           seat designed to be straddled by the operator  
 14           and handlebars for steering control; but

15           “(B) does not include a prototype of a mo-  
 16           torized, off-highway, all-terrain vehicle or other  
 17           motorized, off-highway, all-terrain vehicle that  
 18           is intended exclusively for research and develop-  
 19           ment purposes unless the vehicle is offered for  
 20           sale.

21           “(2) ATV ACTION PLAN.—The term ‘ATV ac-  
 22           tion plan’ means a written plan or letter of under-  
 23           taking that describes actions the manufacturer or  
 24           distributor agrees to take to promote ATV safety,  
 25           including rider training, dissemination of safety in-

1       formation, age recommendations, other policies gov-  
 2       erning marketing and sale of the vehicles, the moni-  
 3       toring of such sales, and other safety related meas-  
 4       ures, and that is substantially similar to the plans  
 5       described under the heading The Undertakings of  
 6       the Companies in the Commission Notice published  
 7       in the Federal Register on September 9, 1998 (63  
 8       FR 48199–48204).”.

9       (b) GAO STUDY.—The Comptroller General shall  
 10      conduct a study of the utility, recreational, and other ben-  
 11      efits of all-terrain vehicles to which section 38 of the Con-  
 12      sumer Product Safety Act (15 U.S.C. 2085) applies, and  
 13      the costs associated with all-terrain vehicle-related acci-  
 14      dents and injuries.

15      (c) CONFORMING AMENDMENT.—The table of con-  
 16      tents, as amended by section 21 of this Act, is further  
 17      amended by inserting after the item relating to section 40  
 18      the following:

“Sec. 41. All-terrain vehicle safety standard.”.

19      (d) EFFECTIVE DATE.—The amendment made by  
 20      subsection (a) shall take effect 90 days after the date of  
 21      enactment of this Act.

22      **SEC. 31. GARAGE DOOR OPENER STANDARD.**

23      Notwithstanding section 203(b) of the Consumer  
 24      Product Safety Improvement Act of 1990 (15 U.S.C. 2056  
 25      note) or any amendment by the American National Stand-

ards Institute and Underwriters Laboratories, Inc. of its Standards for Safety—UL 325, all automatic garage door openers that directly drive the door in the closing direction that are manufactured more than 6 months after the date of enactment of this Act shall include an external secondary entrapment protection device that does not require contact with a person or object for the garage door to reverse.

**SEC. 32. REDUCING DEATHS AND INJURIES FROM CARBON MONOXIDE POISONING.**

(a) IN GENERAL.—The Consumer Product Safety Commission shall issue a final rule in its proceeding entitled “Portable Generators” for which the Commission issued an advance notice of proposed rulemaking on December 12, 2006 (71 Fed. Reg. 74472), no later than 18 months after the date of enactment of this Act.

(b) REPORT.—Not later than 120 days after the date of enactment of this Act, the Consumer Product Safety Commission shall submit a report to the Senate Committee on Commerce, Science, and Transportation that—

(1) reviews the effectiveness of its labeling requirements for charcoal briquettes (16 C.F.R. 1500.14(b)(6)) during the windstorm that struck the Pacific Northwest beginning on December 14, 2006;

1           (2) identifies any specific challenges faced by  
 2           non-English speaking populations with use of the  
 3           current standards; and

4           (3) contains recommendations for improving the  
 5           labels on charcoal briquettes.

6 **SEC. 33. COMPLETION OF CIGARETTE LIGHTER RULE-**  
 7 **MAKING.**

8           The Consumer Product Safety Commission shall  
 9           issue a final rule mandating general safety standards for  
 10          cigarette lighters in its proceedings entitled “Safety  
 11          Standard for cigarette Lighters” for which the Commis-  
 12          sion issued an advance notice of proposed rulemaking on  
 13          April 11, 2005 (68 Fed. Reg. 11339) no later than 24  
 14          months after the date of enactment of this Act.

15 **SEC. 34. CONSUMER PRODUCT REGISTRATION FORMS.**

16          (a) CONSUMER PRODUCT REGISTRATION FORMS.—

17               (1) IN GENERAL.—Not later than 1 year after  
 18          the date of enactment of this Act, the Commission  
 19          shall, pursuant to its authority under section 16(b)  
 20          of the Consumer Product Safety Act (15 U.S.C.  
 21          2065(b)), promulgate final consumer product safety  
 22          rules that require manufacturers of durable infant  
 23          or toddler products—

1 (A) in accordance with paragraph (2), to  
 2 provide consumers with postage-paid consumer  
 3 registration forms with each such product;

4 (B) in accordance with paragraph (5), to  
 5 maintain a record of the names, addresses, e-  
 6 mail addresses, and other contact information  
 7 of consumers who register their ownership of  
 8 such products with the manufacturer in order  
 9 to improve the effectiveness of manufacturer  
 10 campaigns to recall such products; and

11 (C) to place permanently the manufacturer  
 12 name and contact information, model name and  
 13 number, and the date of manufacture on each  
 14 durable infant or toddler product.

15 (2) REQUIREMENTS FOR REGISTRATION  
 16 FORMS.—

17 (A) IN GENERAL.—The registration forms  
 18 required by paragraph (1)(A) shall provide  
 19 space sufficiently large to permit easy, legible  
 20 recording of the information specified in sub-  
 21 paragraph (B)(i).

22 (B) ELEMENTS.—Such forms shall include  
 23 the following:

24 (i) Spaces for a consumer to provide  
 25 the following:



1 (I) The consumer's name.

2 (II) The consumer's postal ad-  
3 dress.

4 (III) The consumer's telephone  
5 number.

6 (IV) The consumer's e-mail ad-  
7 dress.

8 (ii) The manufacturer's name.

9 (iii) The model name and number for  
10 the product.

11 (iv) The date of manufacture of the  
12 product.

13 (v) A message that—

14 (I) explains the purpose of the  
15 registration; and

16 (II) is designed to encourage con-  
17 sumers to complete the registration.

18 (vi) A statement that information pro-  
19 vided by the consumer shall not be used  
20 for any purpose other than to facilitate a  
21 recall of or safety alert regarding that  
22 product.

23 (vii) A message that explains the op-  
24 tion to register via the Internet, as re-  
25 quired by paragraph (4).

1 (C) PLACEMENT.—Such form shall be at-  
 2 tached to the surface of each durable infant or  
 3 toddler product so that, as a practical matter,  
 4 the consumer will notice and handle the form  
 5 after purchasing the product.

6 (3) TEXT AND FORMAT OF REGISTRATION  
 7 FORMS.—In promulgating regulations under para-  
 8 graph (1), the Commission may prescribe the exact  
 9 text and format of such form.

10 (4) INTERNET REGISTRATION.—In promul-  
 11 gating regulations under paragraph (1), the Com-  
 12 mission shall require manufacturers of durable in-  
 13 fant or toddler products to provide a mechanism for  
 14 consumers to submit to the manufacturer via the  
 15 Internet electronic versions of the registration forms  
 16 required by paragraph (1)(A).

17 (5) RECORD KEEPING AND NOTIFICATION RE-  
 18 QUIREMENTS.—

19 (A) IN GENERAL.—The rules promulgated  
 20 under paragraph (1) shall require each manu-  
 21 facturer of a durable infant or toddler prod-  
 22 uct—

23 (i) to maintain a record of consumers  
 24 who register for such product that includes

1 all of the information provided by such  
2 consumers; and

3 (ii) to use such information to notify  
4 such consumers in the event of a voluntary  
5 or involuntary recall of, or safety alert re-  
6 garding, such product.

7 (B) PERIOD OF MAINTENANCE.—Such  
8 rules shall require such manufacturers of dura-  
9 ble infant or toddler products to maintain the  
10 records described in subparagraph (A)(i) for a  
11 period of not less than 6 years after the date  
12 of manufacture of the product concerned.

13 (C) LIMITATION ON USE OF INFORMATION  
14 COLLECTED.—The rules promulgated under  
15 paragraph (1) shall prohibit manufacturers  
16 from using or disseminating to any other party  
17 the information collected by the manufacturer  
18 under this subsection for any purpose other  
19 than notification to the consumer concerned in  
20 the event of a product recall or safety alert re-  
21 garding the product concerned.

22 (D) RESERVATION.—Nothing in this sec-  
23 tion requires a manufacturer to collect, retain,  
24 or use any information unless it is provided by  
25 the consumer.

1 (b) REPORT AND STUDY.—Not later than 4 years  
 2 after the date of enactment of this Act, the Commission  
 3 shall—

4 (1) conduct a study on the effectiveness of the  
 5 rules promulgated under subsection (a) in facili-  
 6 tating product recalls; and

7 (2) submit to Congress a report on the findings  
 8 of the Commission with respect to the study re-  
 9 quired by paragraph (1).

10 (c) DEFINITIONS.—In this section:

11 (1) COMMISSION.—The term “Commission”  
 12 means the Consumer Product Safety Commission.

13 (2) DURABLE INFANT OR TODDLER PROD-  
 14 UCT.—The term “durable infant or toddler product”  
 15 means a durable product intended for use by, or  
 16 that may be reasonably expected to be used by, chil-  
 17 dren younger than the age of 5 years, including the  
 18 following:

19 (A) Full-size cribs and nonfull-size cribs.

20 (B) Toddler beds.

21 (C) High chairs, booster chairs, and hook-  
 22 on chairs.

23 (D) Bath seats.

24 (E) Gates and other enclosures for con-  
 25 fining a child.

- 1 (F) Play yards.
- 2 (G) Stationary activity centers.
- 3 (H) Infant carriers.
- 4 (I) Strollers.
- 5 (J) Walkers.
- 6 (K) Swings.
- 7 (L) Bassinets and cradles.

8 **SEC. 35. REPEAL.**

9 Section 30 (15 U.S.C. 2079) is amended by striking  
 10 subsection (d) and redesignating subsections (e) and (f)  
 11 as subsections (d) and (e), respectively.

12 **SEC. 36. CONSUMER PRODUCT SAFETY COMMISSION PRES-**  
 13 **ENCE AT NATIONAL TARGETING CENTER OF**  
 14 **U.S. CUSTOMS AND BORDER PROTECTION.**

15 (a) IN GENERAL.—Except as provided in subsection  
 16 (c), not later than 6 months after the date of the enact-  
 17 ment of this Act, the Consumer Product Safety Commis-  
 18 sion shall enter into a memorandum of understanding with  
 19 the Secretary of Homeland Security for the assignment  
 20 by the Commission of not less than 1 full-time equivalent  
 21 personnel to work at the National Targeting Center of  
 22 U.S. Customs and Border Protection.

23 (b) RESPONSIBILITIES.—Any personnel assigned  
 24 under subsection (a) shall, in cooperation with other per-  
 25 sonnel working at the National Targeting Center, identify

1 products, before such products are imported into the cus-  
 2 toms territory of the United States, that—

3 (1) are intended for importation into such cus-  
 4 toms territory; and

5 (2) pose a high risk to consumer safety.

6 (c) WAIVER.—The Consumer Product Safety Com-  
 7 mission may waive the requirement of subsection (a) if  
 8 the Commission determines that an assignment under sub-  
 9 section (a) would not improve the effectiveness of the  
 10 Commission in identifying products described in sub-  
 11 section (b) before such products are imported into the cus-  
 12 toms territory of the United States.

13 **SEC. 37. DEVELOPMENT OF RISK ASSESSMENT METHOD-**  
 14 **LOGY TO IDENTIFY SHIPMENTS OF CON-**  
 15 **SUMER PRODUCTS THAT ARE LIKELY TO**  
 16 **CONTAIN CONSUMER PRODUCTS IN VIOLA-**  
 17 **TION OF SAFETY STANDARDS.**

18 (a) IN GENERAL.—Not later than 1 year after the  
 19 date of the enactment of this Act, the Consumer Product  
 20 Safety Commission shall develop a risk assessment meth-  
 21 odology for identification of shipments of consumer prod-  
 22 ucts that are—

23 (1) intended for import into the customs terri-  
 24 tory of the United States; and

1           (2) are likely to include consumer products that  
 2           would be refused admission into such customs terri-  
 3           tory under section 17(a) of the Consumer Product  
 4           Safety Act (15 U.S.C. 2066(a)).

5           (b) USE OF INTERNATIONAL TRADE DATA SYS-  
 6           TEM.—The methodology developed under subsection (a)  
 7           shall, as far as practicable, use the International Trade  
 8           Data System (ITDS) established under section 411(d) of  
 9           the Tariff Act of 1930 (19 U.S.C. 1411) to evaluate and  
 10          assess information about shipments of consumer products  
 11          intended for import into the customs territory of the  
 12          United States before such shipments enter such customs  
 13          territory.

14          (c) AUTHORIZATION OF APPROPRIATIONS.—There  
 15          are authorized to be appropriated such sums as may be  
 16          necessary to carry out this section.

17       **SEC. 38. SEIZURE AND DESTRUCTION OF IMPORTED PROD-**  
 18                               **UCTS IN VIOLATION OF CONSUMER PRODUCT**  
 19                               **SAFETY STANDARDS.**

20          (a) LIST OF PRODUCT DEFECTS THAT CONSTITUTE  
 21          A SUBSTANTIAL PRODUCT HAZARD.—

22               (1) IN GENERAL.—Not later than 6 months  
 23               after the date of the enactment of this Act, the Con-  
 24               sumer Product Safety Commission shall publish a  
 25               list of product defects that constitute a substantial

1 product hazard (as defined in section 15 of the Con-  
 2 sumer Product Safety Act (15 U.S.C. 2064)).

3 (2) UPDATES.—The Consumer Product Safety  
 4 Commission shall, as the Commission considers ap-  
 5 propriate—

6 (A) update the list required by paragraph  
 7 (1); and

8 (B) provide a copy of the updated list to  
 9 the Secretary of Homeland Security.

10 (b) DESTRUCTION OF NONCOMPLIANT IMPORTED  
 11 PRODUCTS.—Section 17(e) (15 U.S.C. 2066(e)) is amend-  
 12 ed to read as follows:

13 “(e) PRODUCT DESTRUCTION.—The Secretary of  
 14 Homeland Security shall ensure the destruction of any  
 15 product refused admission into the customs territory of  
 16 the United States under this section unless such product  
 17 is exported, under regulations prescribed by the Secretary  
 18 or the Commission, as appropriate, within 90 days of the  
 19 date of notice of such refusal or within such additional  
 20 time as may be permitted pursuant to such regulations.”.

21 (c) INSPECTION AND RECORDKEEPING REQUIRE-  
 22 MENTS AS CONDITIONS ON IMPORTATION.—Section 17(g)  
 23 (15 U.S.C. 2066(g)) is amended by striking “Commission  
 24 may” and inserting “Commission shall”.



1 (d) PROVISION OF INFORMATION TO COOPERATING  
 2 AGENCIES.—Section 17(h)(2) (15 U.S.C. 2066(h)(2)) is  
 3 amended by striking “Commission may” and inserting  
 4 “Commission shall”.

5 (e) CONSTRUCTION.—Section 17 (15 U.S.C. 2066) is  
 6 amended by adding at the end the following:

7 “(i) CONSTRUCTION.—Nothing in this section shall  
 8 be construed to prevent the Secretary of Homeland Secu-  
 9 rity from prohibiting entry or directing the destruction or  
 10 export of a consumer product under any other provision  
 11 of law.”.

12 (f) CONFORMING AMENDMENTS.—Such section 17 is  
 13 further amended—

14 (1) in subsection (a), by striking “Any con-  
 15 sumer” and inserting “REFUSAL OF ADMISSION.—  
 16 Any consumer”;

17 (2) in subsection (b), by striking “The” in the  
 18 first sentence and inserting “SAMPLES.—The”;

19 (3) in subsection (c), by striking “If” and in-  
 20 serting “MODIFICATION.—If”;

21 (4) in subsection (d), by striking “All actions”  
 22 in the first sentence and inserting “SUPERVISION OF  
 23 MODIFICATIONS.—All actions”;

24 (5) in subsection (f), by striking “All expenses”  
 25 in the first sentence and inserting “PAYMENT OF

1 EXPENSES OCCASIONED BY REFUSAL OF ADMIS-  
 2 SION.—All expenses”;

3 (6) in subsection (g), by striking “The Commis-  
 4 sion” and inserting “IMPORTATION CONDITIONED  
 5 UPON MANUFACTURER’S COMPLIANCE.—The Com-  
 6 mission”;

7 (7) in subsection (h), by striking “(h)(1) The  
 8 Commission” and inserting “(h) PRODUCT SURVEIL-  
 9 LANCE PROGRAM.—(1) The Commission”.

10 (g) TECHNICAL AMENDMENTS.—Such section 17 is  
 11 further amended—

12 (1) by striking “Secretary of the Treasury”  
 13 each place it occurs and inserting “Secretary of  
 14 Homeland Security”; and

15 (2) by striking “Department of the Treasury”  
 16 each place it occurs and inserting “Department of  
 17 Homeland Security”.

18 **SEC. 39. DATABASE OF MANUFACTURING FACILITIES AND**  
 19 **SUPPLIERS INVOLVED IN VIOLATIONS OF**  
 20 **CONSUMER PRODUCT SAFETY STANDARDS.**

21 (a) DOCUMENTATION OF ACTS AND OMISSIONS.—If  
 22 the Consumer Product Safety Commission discovers evi-  
 23 dence that a violation of a consumer product safety rule  
 24 was the result of an act or omission by a manufacturing

1 facility or supplier, the Commission shall document the  
2 following:

3 (1) The date on which the violation occurred.

4 (2) A description of the violation and the cir-  
5 cumstances that led to the violation.

6 (3) Details of the act or omission and the rela-  
7 tion of such act or omission to the violation.

8 (4) Identifying information about the manufac-  
9 turing facility or supplier, including the name and  
10 address of such manufacturing facility or supplier.

11 (b) DATABASE.—The Consumer Product Safety  
12 Commission shall establish and maintain a database that  
13 contains the following:

14 (1) All of the information documented under  
15 subsection (a).

16 (2) Any information submitted under subsection  
17 (d).

18 (c) NOTICE.—The Commission shall take reasonable  
19 steps to provide notice to each manufacturing facility or  
20 supplier documented in the database required by sub-  
21 section (b) of the inclusion of such manufacturing facility  
22 or supplier in such database and the reasons for such in-  
23 clusion.

24 (d) COMMENTS.—The Commission shall establish a  
25 process by which a manufacturing facility or supplier in-

1 cluded in the database required by subsection (b) for an  
2 act or omission described in subsection (a) may submit  
3 information to the Commission for inclusion in the data-  
4 base. Such information may consist of—

5           (1) evidence refuting evidence contained in the  
6           database that a violation described in subsection (a)  
7           was the result of an act or omission by such manu-  
8           facturing facility or supplier; and

9           (2) evidence of remedial measures taken by  
10          such manufacturing facility or supplier to correct  
11          such act or omission.

12 Information submitted under this subsection shall be  
13 treated the same as information in the database for pur-  
14 poses of subsections (g) and (h).

15       (e) AVAILABILITY OF DATABASE TO U.S. CUSTOMS  
16 AND BORDER PROTECTION.—The Consumer Product  
17 Safety Commission shall make the database established  
18 under subsection (b) available on a real-time basis to the  
19 Commissioner responsible for the U.S. Customs and Bor-  
20 der Protection of the Department of Homeland Security.

21       (f) USE OF DATABASE BY U.S. CUSTOMS AND BOR-  
22 DER PROTECTION.—The Commissioner responsible for the  
23 U.S. Customs and Border Protection of the Department  
24 of Homeland Security shall use the information stored in  
25 the database required by subsection (b) in determining—

1           (1) whether a container being imported into the  
2       United States contains consumer products that are  
3       in violation of a consumer product safety standard  
4       of the Commission; and

5           (2) whether action should be taken with respect  
6       to any consumer products in such container under  
7       section 17 of the Consumer Product Safety Act (15  
8       U.S.C. 2066).

9       (g) LIMITATION ON DISCLOSURE OF INFORMATION  
10   IN DATABASE.—

11           (1) IN GENERAL.—The Consumer Product  
12       Safety Commission and the Commissioner respon-  
13       sible for the U.S. Customs and Border Protection of  
14       the Department of Homeland Security shall not dis-  
15       close any information contained in or provide access  
16       to the database required by subsection (b) to any  
17       person except as provided in paragraph (2), provided  
18       that this limitation does not apply to the disclosure  
19       of information that was collected, received, or main-  
20       tained by the Commission for purpose other than in-  
21       clusion in the database.

22           (2) EXCEPTION FOR LAW ENFORCEMENT AND  
23       NATIONAL SECURITY.—The Consumer Product Safe-  
24       ty Commission and the Commissioner responsible for  
25       the U.S. Customs and Border Protection of the De-

1       partment of Homeland Security may disclose infor-  
 2       mation contained in and provide access to the data-  
 3       base required by subsection (b) to a law enforcement  
 4       agency or an intelligence agency of the United  
 5       States if the Commission or the Commissioner deter-  
 6       mine that such disclosure is necessary—

7               (A) to prevent a crime; or

8               (B) to detect, prevent, or respond to a  
 9       threat to national security.

10       (3) EXEMPTION FROM FREEDOM OF INFORMA-  
 11       TION ACT DISCLOSURE REQUIREMENTS.—The data-  
 12       base required by subsection (b) shall not be subject  
 13       to the disclosure requirements of section 552 or  
 14       552A of title 5, United States Code.

15       (h) LIMITATION ON USE OF INFORMATION IN DATA-  
 16       BASE FOR CERTAIN CIVIL OR CRIMINAL PENALTIES.—

17       (1) PROHIBITION ON IMPOSITION BY CONSUMER  
 18       PRODUCT SAFETY COMMISSION OF PENALTIES SOLE-  
 19       LY ON BASIS OF DATABASE.—The Consumer Prod-  
 20       uct Safety Commission may not impose any penalty  
 21       under section 20 or 21 of the Consumer Product  
 22       Safety Act (15 U.S.C. 2069, 2070) on any person  
 23       solely on the inclusion of information on a person in  
 24       the database required by subsection (b).

1           (2) PROHIBITION ON IMPOSITION BY U.S. CUS-  
2       TOMS AND BORDER PROTECTION OF PENALTIES  
3       SOLELY ON BASIS OF DATABASE.—Notwithstanding  
4       any other provision of law, the Commissioner re-  
5       sponsible for the U.S. Customs and Border Protec-  
6       tion of the Department of Homeland Security may  
7       not impose any civil or criminal penalty on any per-  
8       son solely on the inclusion of information on a per-  
9       son in the database required by subsection (b).

10       (i) AUTHORIZATION OF APPROPRIATIONS.—There  
11       are authorized to be appropriated such sums as may be  
12       necessary to carry out this section.

Calendar No. 582

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 2663**

**A BILL**

To reform the Consumer Product Safety Commission to provide greater protection for children's products, to improve the screening of noncompliant consumer products, to improve the effectiveness of consumer product recall programs, and for other purposes.

FEBRUARY 26, 2008

Read the second time and placed on the calendar